

No. 11892

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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PARAMOUNT PEST CONTROL SERVICE, a  
corporation,

Appellant,

vs.

CHARLES P. BREWER, individually and doing  
business as Brewer's Pest Control, ROSALIE  
BREWER, his wife, RAYMOND RIGHT-  
MIRE, CARL DUNCAN and EARL MER-  
RIOTT,

Appellees.

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Transcript of Record

IN TWO VOLUMES

VOLUME II

Pages 267 to 537

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Upon Appeal from the District Court of the United States  
for the District of Oregon

FILED  
JUN 2 - 1946



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(Testimony of Charles P. Brewer.)

A. The information—the only information I had on ant syrup was that Paramount was buying their ant syrup, and that is the only ant syrup I ever saw with Paramount at the time.

Q. So that there will be no question about this, will you run through these exhibits hastily, not taking too much time, Exhibits No. 5-1 to No. 5-24, and tell any information that was ever given to you by anybody connected with the Paramount Pest Control Service as to any of these concoctions? Make it as rapid as possible.

A. The sprays that I see here is Fly Spray F2, Bed Bug Spray—I was told to buy those from the Shell Oil Company and use them. Fungus, I never saw—never saw any of their products.

Q. Refer to the exhibit number, please.

A. No. 5-6, Insect Powder, that was mixed by them, and I never had the formula for mixing it.

Moth Crystals, to my knowledge, was bought on the open market. I never bought any Moth Spray F2.

Phosphorous Paste, they bought in five-gallon lots from jobbers. [188]

Rat Kilzum; Mouse Grain—Most of them are zinc phosphide poisons only that were mixed up as we went along or mixed them up on the job under a warehouse, for instance.

This Roach Powder with—I can't even pronounce it, Exhibit 5-17. I don't know anything about that.

(Testimony of Charles P. Brewer.)

Sodium fluoride is bought upon the open market. Exhibit 5-19.

The Sodium Fluoroacetate labels are bought, the Paramount labels that I have seen on their cans of 1080, which is the common term for Sodium Fluoroacetate, which is bought from the Monsanto Chemical Company in St. Louis, Missouri.

Termite and Fungus Mixture—That is 5-21. Sodium Fluoroacetate (5-22), and Exhibit 5-21 is an envelope I never saw.

Q. Outside of the information that you acquired from watching Mr. Duncan put out this bait for rodents, was any information ever given to you about any of the formulas and processes of Paramount Pest Control Service?

A. Not to my knowledge was any technical information given.

Q. Was there any other information, technical or otherwise, about their formulas?

A. No, not formulas.

Q. Jumping for a moment to the time that you went into business for yourself in August, 1946, have you in the conduct of your business—I mean August, 1947—used any of these products [189] or formulas of the Paramount Pest Control Service?

A. No, I have not.

Q. Where have you bought the things that you have used to carry on your business?

A. I bought them from different drugstores, from different drug concerns, such as McKesson-

(Testimony of Charles P. Brewer.)

Robbins; some articles like mouse traps, and all, I bought from Chown Hardware, and spots of that kind.

Q. Did you retain, when you went into business in 1946, any of the formulas or products of Paramount Pest Control Service?

A. You mean August 1st, 1947?

Q. Yes. A. I did not.

Q. Coming back now, under what arrangement did you come to Portland?

A. Under the arrangement of \$250 a month salary.

Q. There has been testimony in the case that, at some time, in California, you were shown a copy of one of these franchises. What is the fact as to that?

A. I didn't see a copy of the franchise. I knew that there was a franchise that they did give to different men in the territories where the amount of business would support a franchise.

Q. Did you have any discussion with anybody down there about a franchise? [190]

A. Yes, I talked with Mr. Sibert about one. It was a lengthy conversation and he told me that the Portland territory was in the red and that he would send me up here as manager and, when this business got up to \$4,000 to \$5,000 a month, it would be enough to support itself, and then I would have a franchise.

Q. In the meantime you received what?

A. \$250 a month salary.

(Testimony of Charles P. Brewer.)

Q. What date did you come to Portland?

A. I think I entered the State of Oregon on about the 8th day of April.

Q. Who came with you?

A. Harold Hilts.

Q. What was done when you came to Portland?

A. Well, we got a room, I believe, at the Roosevelt Hotel or the Congress Hotel—I stayed in several the next few months; I don't remember which was which. Harold Hilts attended to the business end of it, as far as I know. In fact——

Q. What do you mean, the business end of it?

A. He went out and talked to the former manager and got the books of the company to pull and audit or something. I stayed around the hotel. Mr. Glenn Fisher arrived up here around the 9th or 10th of April, and they called Mr. Taylor, the former manager, in for a conference and fired him. Mr. Fisher did this. Then Mr. Harold Hilts showed me the books.

Mr. Fisher went back to California immediately after [191] that; in fact, that day; and Harold Hilts showed me how the books were handled, what they looked like, what different books there were, that evening until eleven o'clock. and the next morning he showed me again, to the best of his ability, and the best I could learn, what was going on. Then he took the plane back that day for San Francisco.

Q. Did that leave anybody here for the Paramount Pest Control Service except yourself?

(Testimony of Charles P. Brewer.)

A. There was one man, Ray Warmuth, that was working for them at the time. It seems he was working part time. I don't know just what the arrangement was. I saw him three or four times during the month of April. That is all I saw him.

Q. Did they have an office?

A. Not an office; they had a call office where phone calls could come in, and Hilts had brought down the books and typewriter and office paraphernalia, all of that, this, that and the other, to the hotel room and left it there with me.

Q. You started in to operate from the hotel?

A. I was in the hotel until I could find an office.

Q. When did you find an office?

A. About May 1st.

Q. Did you sign up a lease?

A. No, there was no lease on the office. I was offered a lease, but I never signed one.

Q. You did sign a lease on the warehouse? [192]

A. I did.

Q. Yesterday counsel asked Mr. Sibert whether or not you had violated any provisions of the franchise and he said you had taken this lease in your name. Will you explain that to the Court?

A. The lease was made out to Charles P. Brewer, doing business as Paramount Pest Control Service.

Q. Why did you make it out that way?

A. That was the understanding as to who owned the business and how it was named, and my insurance has been ordered in that name, and that was



(Testimony of Charles P. Brewer.)

the name. Our insurance was in the name of Charles P. Brewer, doing business as Paramount Pest Control Service.

Q. Who had ordered that insurance?

A. That had been ordered from the Oakland office, through their agent in Oakland.

Q. That was prior to the time this corporation had been organized, was it?

A. No, they had been organized at the time, because my insurance was dated September 1, 1946.

Q. Where were the poisons and things kept when you first started in?

A. What I did not have in the hotel, which was not much, was out to Taylor's home when I arrived here. They wanted it out of there immediately. We had to move it to Ray Warmuth's garage. It was right on the sidewalk, and had no doors to it, and the [193] kids were playing in it and causing trouble, and I tried to find a warehouse for it and I finally got it into Crosby's Garage until I could find room in a building where I could locate it, other than in somebody's personal garage.

Q. You have testified you were to be paid \$250 a month until business got to, you say, about \$4,000 or \$5,000 a month?      A. I was.

Q. At any time, up to the time you severed your connection, did the business reach that volume?      A. It never did.

Q. What was the volume of business in the year from July 1, 1946, to June 30, 1947, in round figures?

(Testimony of Charles P. Brewer.)

A. Well, I don't know the division of the entire one year, but the thirteen months, the entire time of the franchise, it hit around \$35,000, in round figures.

Q. Did you put any money in the business when you first started in here?

A. Yes, I opened the bank account at the First National Bank with \$1,000 of my own personal money to carry the payroll and expenses until it would get some money into the organization.

Q. When did Mr. Duncan come up?

A. The first time he came up was May, around May, somewhere around May 10th.

Q. What did he do while he was here?

A. He trained three days—He was here around eight to ten [194] days in Oregon, but he trained Rightmire three days and then he left here on the Eastern Oregon service run and serviced through up the Columbia River to the Idaho line and back through Burns and Bend, Oregon, and back into Portland.

Q. Then, when did he come later?

A. I believe it was in October or November, the next time he came up.

Q. What did he do from that time on?

A. He was here with me, training men in the southern part of the state that I couldn't go down there and train. He was down there for two weeks or three weeks. I don't know just the exact time. He went from there up to Washington and he worked up around Spokane, Washington, for the

(Testimony of Charles P. Brewer.)

Paramount Pest Control Service for a period of, I don't know, two weeks to a month or six weeks. I don't know.

Q. By the way, there were some magazines marked as exhibits in this case, purporting to be devoted to insect control and so forth. Those are not put out by the Paramount Pest Control Service, are they? A. No, they are not.

Q. Are they ever sold to the public?

A. They are sold to the public.

Q. In dealing with these other people from whom you buy in your business, can you get data from them as to insect control and rat control?

A. Oh, yes. The Zehring Chemical Company will give you any information you want on the control of any of them insects.

Q. Can you tell the Court, in round figures, about how many new accounts you procured in the thirteen months you were with Paramount Pest Control Service?

A. I would say between four and five hundred accounts.

Q. About how many accounts did they have when you came here?

A. I would say, not calling Safeway Stores as all individual ones, I would say somewheres around 100 to 150.

Q. Was there, at any time, any complaint made to you by anybody connected with Paramount Pest Control Service as to your conduct of their business in the State of Oregon?



(Testimony of Charles P. Brewer.)

A. No. They always thought that I was doing a wonderful job up here, and bragged on this as being one of the best territories in the organization.

Q. How did it happen, Mr. Brewer, that you transferred from this \$250 a month to the signing of this franchise?

A. Mr. Sibert came up here the latter part of June, I would say after the 25th, some time, and he said—he stayed out at our home; that was a common occurrence between us—and he told me at my home that he was going to let me have a franchise. I said I did not want any part of a franchise; the business is in the red; and I could not support a franchise, and he said, “I have got to dump it.” He said, “I have got to dump the business. We are incorporating in the State of California the first day of [196] July, and the State of Oregon is operating in the red, and we cannot incorporate if we take a portion of our territory operating in the red. He told me that I would have to take a franchise out, or I was out at that time.

Q. At that time had you bought your home in Oregon?      A. I had bought it in Oregon.

Q. And you had sold your home in Oakland?

A. I had sold my home in Oakland and moved up here, all of our furniture up here and——

Q. In operating under this franchise, did you have anything to do with fixing the prices of the merchandise that you had to buy from the company?

A. None whatever. If we ordered anything from Paramount, they sent us a bill for it.

(Testimony of Charles P. Brewer.)

Q. Did you need an automobile in the transaction of business?      A. I did.

Q. Did you request them to furnish you one?

A. I asked Mr. Sibert about an automobile, if they could help me out in getting one, and he said it was my business; if I wanted an automobile I would have to go and buy it, so I did.

Q. Did you have an automobile of your own?

A. I had one of my own, personally.

Q. Was that used in the business?

A. It was used by me in the business.

Q. Was anything furnished, in the operation of this business, [197] by the Paramount Pest Control Service?

A. Well, if I needed some sodium fluoride, I would order from them, but if I wanted some 1080 I would write them and tell them to send me some, which they did, and to bill me for it. They sent me any office stationery or anything I needed, with a statement for it, of course, from themselves or from the printing company.

Q. You say that the gross income for the thirteen months was \$35,000. Can you tell the Court, in round figures, the expenses of operation, exclusive of any moneys sent to the Paramount Pest Control Service on the franchise?

A. It was somewhere around \$29,000 to \$30,000, was the expenses.

Q. That would leave a net profit of \$5,000?

A. Approximately, yes.

(Testimony of Charles P. Brewer.)

Q. If you had to pay Paramount Pest Control Service 20 per cent of \$35,000, you would be \$2,000 short? A. I would have been.

Q. When did you first discuss with anybody connected with Paramount Pest Control Service any change in the terms of this franchise?

A. Right during the time, after Thanksgiving in November, I talked with Mr. Sibert in the Oakland office. I told him that the business could not be operated on a 20 per cent gross to them; that it would cost me more and everything else, and I would not operate that way. [198]

He told me that he would try to get it back to where it would be 50-50 for us, and I said that would be all right, and he called Harold Hilts into his office, or Mr. Hilts walked into the office, one or the other, right at that particular time, and Mr. Sibert told Hilts that he could make that change, whereas it would be a 50-50 proposition, even on the net profits—I don't remember that word "net profits" used—but it was a 50-50 proposition, and that they would change it over to that.

Q. Was anything said or discussed as to how long that would run or whether it would terminate at any period?

A. Mr. Sibert asked me if I wanted it to run until the first of the year, for one year, or when, and I said, "As far as I am concerned, it can run from now on, as long as the contract is in force," and he said, "All right. If that is the way you

(Testimony of Charles P. Brewer.)

want it," and I said, "That is the way I want it," and he said, "That is the way it will be."

Q. He said he had some talk with you up here in September about this thing and had forgotten to report it to those men until December. Did you ever discuss it with Mr. Hilts at all?

A. Not to my knowledge was anything discussed in September.

Q. When, with reference to that time, was there any question or discussion with anybody as to this change in the terms of the franchise?

A. The only time anything was said about it whatsoever was when Mr. Hilts pulled up an audit statement from the books—pulled [199] an audit statement from the books—around September 13th or 14th and presented it to me.

Q. Everything, as far as you knew, went along satisfactorily until some time in March?

A. It was.

Q. When did Mr. Hilts see you in March?

A. I don't remember whether it was the 13th or 14th. It was probably the 13th or 14th.

Q. Where was it?

A. At the office in Portland here.

Q. Tell the Court what happened here at that time, at that meeting with Mr. Hilts?

A. Mr. Hilts pulled up a balance sheet or rough draft of the books and told me that I owed the Paramount Pest Control Service \$994 for January and February's operation, and it seemed to me—it made me so mad I couldn't talk.

(Testimony of Charles P. Brewer.)

I turned to my wife and I said, "Make them out a check." She looked at me as though I was silly and I said, "Make out the check," and she made it out quick and I handed it to him.

A few minutes later I got my things and I said, "I will drive you to the airport," and on the way to the airport I told Hilts that I was completely done with Paramount Pest Control Service.

Q. Was that this check for \$994.25?

A. It is.

Q. Now, this audit that he showed you as a basis for the money [200] they were claiming you owed, was that audit made on the 50-50 basis, or was it made on the 20-80 basis?

A. It was made on the 20 per cent of gross business done.

Q. Can you turn to Exhibit 29 in that bunch of exhibits? That is the letter of March 15th from Harold Hilts.

A. I have it.

Q. Do you have it front of you?

A. Yes. This is the one he sent me.

Q. Can you tell when Harold Hilts left Portland?

A. He left here on Friday evening, around four or five o'clock in the afternoon, rather.

Q. That would be on March 13th?

A. I believe the 13th or 14th. I have no idea for sure.

Q. I think the calendar will show March 13th. It was at that time you told him that you were through?

A. It was.



(Testimony of Charles P. Brewer.)

Q. I think the 14th was Friday. I think the calendar shows 15th was Saturday. When did you receive this letter, this letter which is marked Exhibit 29?

A. I received it at nine o'clock in the morning at my home, airmail special delivery.

Q. Sunday morning?

A. Sunday morning.

Q. The third paragraph reads:—The first paragraph, I should say: “Enclosed is a statement of your account for 1946, also [201] January and February of this year.

“You will note that this splits everything across the board for 1946 and we both come out with \$1,479.65 and you still have your \$1,000 investment in the business.

“For January and February there is a net profit of \$1,016.55 with the franchise out of it, now you have drawn \$512.22 for both months; if we take \$512.22 like you did that will be your franchise for January and February.”

Did that differ from the audit that he had sprung on you on the 12th or 13th?

A. It absolutely does.

Q. Why did you go on then with the business, after you had told him you were all through?

A. Because he wrote me this letter and explained in here that they would split across the board, and that Sibert had tried to explain it to him just before he came up here but he didn't understand. That is what it says here.

(Testimony of Charles P. Brewer.)

Q. All right. When was the next discussion you had with anybody about the way the money was to be divided between you?

A. I think maybe in April. Hilts and I may have mentioned it some, of course, around the office there, but there was no great discussion on it at that time.

Q. When was there any discussion to the point that there was any difference between you?

A. The first difference as to moneys or anything was down in [202] Oakland, right at the last, the controversy of June.

Q. Did you see Mr. Hilts? He said he saw you between the 17th and 20th of June.

A. Why, I saw him the 17th of June. He and Mr. Sibert came here but he did not pull an audit of the books at that time. He had a recap of the business done, the income and expenses. He made out a blank statement to turn in to the bank and then he and Mr. Sibert went on to Seattle. I gave Harold Hilts a key to the office and files so that he could come into the office and pull an audit of the books while I was in California.

Q. In other words, an audit was not made——

A. An audit was not made until after I had left Portland.

Q. You said a bank statement, a financial statement, was prepared for the Bank of California. Who prepared that?

A. Mr. Hilts prepared it.

(Testimony of Charles P. Brewer.)

Q. I am referring now to Exhibit 77. I will ask you who did the typewriting?

A. Mr. Hilts did that.

Q. What—For what purpose was that exhibit prepared?

A. To present to the bank to establish credit for me so I could borrow money from the Bank of California.

Q. For what purpose?

A. To give to him.

Q. When had anybody requested that you borrow money to pay on your indebtedness to them?

A. Mr. Sibert had called me some time the latter part of April or the first of May from Seattle and told me that he was in a pinch for money and would I please go and borrow some money and give to him. He wrote me a letter from Oakland shortly thereafter, which is in the files at the office, asking me to go down—

Mr. Rankin: Just a moment. The letter is the best evidence, of course.

A. All right.

Q. (By Mr. Bernard): Never mind. Just a moment, please. This Exhibit 77 was prepared by Mr. Hilts? A. It was.

Q. For the purpose you have indicated?

A. Yes.

Mr. Bernard: I offer this in evidence as Defendant's Exhibit No. 77. The defendants' exhibits have not been offered yet.

The Court: Is that a new document?



(Testimony of Charles P. Brewer.)

Mr. Bernard: No; it is a pre-trial exhibit.

Mr. Rankin: It was reserved—a number was reserved at the pre-trial for it, but we have not seen the exhibits before this morning. I won't take the time now, but I want to reserve our objections until later. You want to use it?

Mr. Bernard: I want to use it, yes.

The Court: Admitted.

(Financial statement of Charles P. Brewer to [204] the Bank of California thereupon received in evidence and marked Defendants' Exhibit No. 77.)

Q. (By Mr. Bernard): I notice this is made out in the name of Charles P. Brewer and it says, "Cash in Bank of California, \$75.10." Was that the bank account that you handled the business through?

A. That was the bank account, the bank balance at the end of May.

Q. "Accounts Receivable, \$3,624.56." Were those amounts owing you in your operation for the Paramount Pest Control Service?

A. That was due and payable on the books.

Q. "Real estate and buildings, \$5,250." What real estate and buildings were represented?

A. It would be my home.

Q. "Autos and trucks, \$1,836." Does that include your automobile?

A. My personal automobile and Plymouth coupe that I bought.

(Testimony of Charles P. Brewer.)

Q. When did you buy your personal automobile?

A. In October, 1942.

Q. "Other assets, personal furniture, \$2,100."

Is that the furniture at your home?

A. That is.

Q. "Accounts Payable, \$2,759.63." Is that the money that you owed Paramount Pest Control Service? A. That is. [205]

Q. Was that money that they wanted you to borrow to pay? Was that the account, \$2,729.63, that they wanted you to pay? A. It is.

Q. Did you borrow money from the Bank of California? A. No, I didn't.

Q. Why not?

A. Because I would not go into debt for the Paramount Pest Control Service from California. Ted told me he would never press me for money unless this office could pay off; until it could pay off he would not press me for money, and I was not going to go into debt like Osborn and a lot of other managers up here had, and go broke because of it.

Q. When they informed you—When were you informed, rather, that you were going to be required to go back on the 20-80 basis as of July 1st?

A. Mr. Sibert told me that just prior to July 1st.

Q. Where?

A. I don't remember the exact spot, whether it was at his home or in his office in Oakland, California.

Q. What were you told about that?

A. I was told that I was going back on the 20 per cent basis; that he had worked out on a piece of

(Testimony of Charles P. Brewer.)

paper a budget whereby I could operate and make more than \$850 a month and the firm \$600, and that would be a profit on a \$2500-a-month business. I couldn't see where I could make that much by traveling clear to [206] Boise, Idaho, and below Klamath Falls, Oregon.

Q. What did you tell him?

A. I told him it would not work and that I would carry the business for the month of July.

Q. Did you tell him what you would do at the end of the month of July?

A. I didn't tell him right then what I would do. I told him I would carry the business for the month of July.

Q. Did you agree at any time to go back on the 20-80 basis?

A. I never agreed with them. They put me right back on the 20-80 basis.

Q. After you wrote this letter of resignation, did Hilts come up here?

A. Yes, he came up here around the first day of August.

Q. Will you tell what you did with Hilts as to turning over to him any of the property of the company that you had been using in the operation of this business?

A. Mr. Hilts and I went down to the office and got paper and we started in to take an inventory of the supplies around the office. We were both writing down, so we decided to make that simpler, and

(Testimony of Charles P. Brewer.)

he wrote it down and I would call it off, and we would check it.

I called off all the supplies and equipment around the office. Then we went out to the warehouse, went in there, at Fifteenth and Marshall, and took an inventory of all supplies [207] and equipment there.

I told Hilts that there was a spray trailer and spray machine at my home, and we would go out there and get those, and we went out there and he saw the spray trailer. I told him what it cost and where it was. The spraying machine I couldn't find. It was not there, and there was a few little items—a little bit of bait or maybe a little sugar or something like that, that had been laying around. We gathered that up and I gave it to Hilts, and that was noted in the inventory.

I told Hilts I would either get them a spray machine or I would find it, and the spray trailer they could have had.

Then, the next day, or that evening, Hilts had gone into the warehouse and taken a spray machine or something out of the warehouse, and I don't know whether he had done a job with it or not, but when I found out about it through the management of the building I told him they were not allowed in that office any more until I had a definite statement because every time I asked, "What kind of a settlement are you going to make with me?" he said, "You know we will do just what is right by you." I said, "What kind of a settlement?" And he said,

(Testimony of Charles P. Brewer.)

"We will settle like we said we would," and that is all he would say. I locked up the warehouse until they would make some kind of a definite statement as to the settlement.

Q. These supplies, equipment and things you turned back, had you already been charged for them by the company? [208]           A. I had.

Q. All right. Going to this settlement that you wanted to have——

A. That was on a Saturday, I believe. I believe it was Saturday afternoon. I am not sure of the exact time, but Mr. Fisher, Wendy Fisher, and Harold Hilts were there at the time. I told Mr. Celsi that they were not allowed in the building until I said so. Mr. Celsi told them that he had leased the building to me and when I said they could go in, they could. I believe it was Saturday afternoon. They were locked out of there until Monday.

Monday Mr. Sibert came up and he argued back and forth about forty-five minutes before he definitely said he would settle with me, pay me any moneys due and payable to me, and pay me for my supplies and equipment.

Q. Did you turn everything over to him?

A. Turned everything over except the spray trailer. It was hauled out and parked on the street. I left it there for them to come and get it any time they had a place to park it. The one spray machine—I told them I would bring it down to him. I didn't have it—it was out; one of the boys had it; and I got it later, and I didn't take it down to them.



(Testimony of Charles P. Brewer.)

Q. Did you make a demand that they have an audit at that time?

A. I told Mr. Sibert that if these books were audited by a Portland accounting firm and we settled on that basis, then he [209] could have the warehouse and the supplies and the rest of it, but that they could not take these books to California for an audit down there.

The next morning Mr. Sibert called in Mr. Young, I believe, of Jones and Young, an accounting firm, to audit the books and before he could get started Mr. Sibert said something to him and he got mad. He called up Sawtelle, Goldrainer & Company, and they went down and completed an audit of the books.

Q. That has been known in these proceedings as the Sawtelle Goldrainer & Company audit?

A. Yes, sir.

Q. Exclusive of this \$1,000 that you put into the business, what were your drawings from this company for the thirteen months that you were with them?

A. Other than getting back the thousand dollars that I put in to carry it forward and the expenses that was paid, I drew thirty-two hundred and a few dollars.

Q. Some testimony was given in this case that they paid for you to take an airplane trip to California. Do you recall that?

A. They did not pay for that airplane trip. It was around the 25th day of June. Mr. Sibert—

(Testimony of Charles P. Brewer.)

Mr. Hilts and I had called him. He did make a reservation so I could go on the same plane Mr. Sibert went on, but Checks numbered 398, 399 and 400 show where I drew altogether \$200 just a day or so before I left. I used that to buy my tickets and met Mr. Sibert at the airport [210] with my daughter and we got on the plane and flew to California and I bought those tickets.

Q. Mr. Brewer, about when did you decide to go into business for yourself?

A. It was after the 15th of August and somewhere around, I would say, around the 20th or 25th, of July, pardon me.

Q. There is an exhibit here showing that your wife first filed an assumed name certificate and later you did. Why was it that your wife signed the first one?

A. I was still working with Paramount and I was out helping to service calls and continuing to work for them, and I did not feel like taking the time to go and do it.

Q. Did you attempt to devote your best efforts to the Paramount Pest Control business up to the first of August?

A. I devoted every minute to Paramount up to August 1st.

Q. Mr. Hilts testified that he saw you at the Roosevelt Hotel July 31st. Do you recall that?

A. I do not recall for sure whether he did or not.

(Testimony of Charles P. Brewer.)

Q. Well, he said in substance that he asked you what had happened and you said you could not make a go of it, and that Rightmire was quitting, wasn't going to stay in the extermination business, that you promised to give him Rightmire's address and never did. Does that call the matter to your attention? A. There was a meeting of that kind.

Q. Tell what your recollection is of what went on? [211]

A. I don't remember how I happened to go to the hotel. I do remember now that he did ask me for Rightmire's address. I told him I would get it from the office. I didn't find it at the office and I didn't call him back. He called me up at my home and asked me what the address was. I didn't know the name of the street. I knew where it was but I didn't know the name of it, nor the address; and the next day, after the inventory was taken, and we were out to my home, he asked me where Ray lived. I told him I didn't know his address but I knew where it was, and he said, "Will you draw me a map so I can find it?" And I said, "Yes," and I took a piece of paper and drew out a map to show him where the Safeway Store was on the corner and showed him the house on the map, where it was, Ray Rightmire's home.

Q. There is some evidence that shortly before the 1st day of August there were three cans of this 1080 returned from Seattle.

A. There were two cans returned to me from Seattle, because Mr. Osborn had requested two cans



(Testimony of Charles P. Brewer.)

about a month before that, that he was in need of some what is known as 1080 in a hurry and would I ship it to him, and I shipped it to him airmail that day, and in July some time I wrote Mr. Osborn and told him I wanted the two cans or the amount that I had paid for them and he sent them back to me, and when I turned over these supplies to Paramount there were at least three cans of 1080 on the shelf for them. [212]

Q. Then, from August 1st on, you did not use any property of any kind or character belonging to Paramount Pest Control Service in connection with your own business?

A. I never used that spray, that "Hi-Fog" nor the trailer.

Q. Or any other of their products?

A. None of their products whatever.

Q. Did you retain in your possession any lists of their customers?      A. I did not.

Q. How did it happen that Rightmire and Duncan came to work for you, and Merriott, too?

A. Well, Mr. Rightmire was hired by me after being interviewed by Mr. Sibert.

Q. I mean, by you after August 1st. How did you happen to hire Duncan, Rightmire and Merriott to work for Brewer's Pest Control?

A. I offered Ray Rightmire a job August 1st or thereabouts, and he came to work for me. I offered Earl Merriott a job around August 1st and he came to work for me, and around the 18th or 20th

(Testimony of Charles P. Brewer.)

or somewhere around there I offered Carl Duncan a job, as he said he had to work for a living, so he went to work for me.

Mr. Bernard: I think you may cross-examine.

#### Cross-Examination

By Mr. Rankin:

Q. Referring to the poisons that you described, from the exhibits that have been admitted in evidence, you say they are all those poisons, common poisons, you can buy on the open market, anyplace?

A. Most of them are that I know of.

Q. You put quite a limitation on your answer. How many of them do you know of?

A. These that have Paramount labels on them I couldn't buy on the market. You can buy a similar product but not these labels, but at least the ingredients, as I read the ingredients here, on the open market.

Q. When you say "as I read the ingredients," do you refer to the active or inert ingredients?

A. I mean the active.

Q. You know enough about pest control to know that active ingredients are required, at least by the laws of Oregon and California, to be placed upon the can or the container?

A. It is according to whether you are selling or using. We do not sell. We do not have labels for tny poisons that we handle because we do not sell poisons.

(Testimony of Charles P. Brewer.)

Q. Would you answer my question, please?

A. What was the question?

(Question read.) [214]

A. To my knowledge, they are not required in the State of Oregon to be placed on the can unless it is for sale.

Q. If you manufacture it, even for use in your own business, labels are required to be placed on the cans?

A. To my knowledge, it does not.

Q. Does it in California?

A. I don't know the California law.

Q. Your statement was you could buy on the open market—I recall this instance—moth crystals. Can you buy the same poison in moth crystals on the open market as it is put out by Paramount Pest Control Service as "Moth Crystals"?

A. I don't know what Paramount puts out. I know I can buy Paradichlora Benzene Crystals on the open market.

Q. Do you know any of the formulas under which Paramount puts out any of these poisons as they appear on the labels?      A. I do not.

Q. So you could not honestly state, then, could you, that you can buy this same product on any common market?

A. I can buy the active ingredients on the common market.

Q. You mean by that you can buy ingredients like those that are used and named in the Paramount labels?      A. Yes.

(Testimony of Charles P. Brewer.)

Q. Now, when did you get the 1080 from Mr. Osborn in Seattle, Washington?

A. It was some time, I believe, after the 15th day of July, 1947. [215]

Q. You got two cans?

A. I got two cans, yes.

Q. You claim that they were redelivered to Paramount? A. They were.

Q. Who received them?

A. Harold Hilts, in the inventory of the equipment in the warehouse at the time.

Q. Who delivered them to him?

A. I did. They were sitting on the shelf and I called them off to him, and he saw that they were there.

Q. Have you at any time since July, 1947, used 1080? A. I have.

Q. Where did you get the 1080?

A. I got it from the Monsanto Chemical Company.

Q. Direct?

A. I got one can from the Fish and Wild Life, and I ordered my others from Monsanto.

Q. Have you got any communication that will show you ordered it from this company?

A. I don't have with me.

Q. Have you got any communications anywhere?

A. I got a letter from Monsanto, yes. I don't know just what you mean by order. I wrote them and told them I wanted it and they wrote me back

(Testimony of Charles P. Brewer.)

instructions just how to get it, and I have a copy of my insurance made out by the insurance company to [216] Monsanto for it.

Q. Just answer one question at a time. Have you in your files anywhere this order to Monsanto for 1080?

A. No, I wouldn't say that I have. If I wrote them a letter to send me some, I didn't keep that letter in my files.

Q. You don't keep any record of your orders of poisons as deadly as 1080?

A. I don't need to keep a record of the order.

Q. I didn't ask you whether you needed to or not. I asked, did you?

A. I wouldn't say for sure. I don't believe I have.

Q. Have you got any letters or anything of record to show whether or not Monsanto Chemical Company sent you any poison known as 1080?

A. What do you mean, record?

Q. Don't you know what a record is after you have been through the preparation of this case? I mean a paper or any statement, typewritten, or written by hand, that says, from this chemical company, that "We are sending you so much of the poison commonly known as 1080?"

A. I have no such thing that I know of.

Q. Now, you say you got a can from Wild Life?

A. Yes.



(Testimony of Charles P. Brewer.)

Q. How did you get that can?

A. I went up and asked them to give me a can of it. [217]

Q. Where are they located?

A. Their main offices are located in the Weatherly Building.

Q. Here in Portland? A. In Portland.

Q. When? A. The first day of August.

A. I would not remember his name.

Q. Do you mean to tell this Court you can buy a can of 1080 from Wild Life? A. I can.

Q. How much did you pay for it? A. \$8.00.

Q. \$8.00 for a can?

A. No, \$4.00 for one can. I meant one pound when I said one can.

Q. You got one pound, now. Your statement is now that you got one pound of 1080 from Wild Life? A. I did.

Q. What? A. The first day of August.

Q. What year? A. 1947.

Q. And you paid \$4.00 for that can?

A. I paid \$8.00 for that pound.

Q. \$8.00 for that pound? A. Yes. [218]

Q. Did you put up any bond with them in connection with that purchase of it?

A. With Fish and Wild Life?

Q. Yes. A. No.

Q. They just sold it to you direct?

A. They have done that to several exterminators in the State of Oregon, including myself.

(Testimony of Charles P. Brewer.)

Q. Did you make any representation to them about your use of it?

A. I told them I was familiar with the use of it.

Q. And you did that for the purpose of serving customers of yours who had formerly been customers of Paramount Pest Control Service?

A. I did it to get poisons to serve customers of Brewer's Pest Control.

Q. Who had formerly been customers of Paramount?

A. Some who had not been.

Q. But some who had been?

A. Some who had and some who hadn't.

Q. Been customers of Paramount Pest Control Service? A. Right.

Q. You stated that the company was in the red, I mean, that Paramount Pest Control Service was in the red when you came here? [219]

A. That is what I was told.

Q. You do not claim the truth of the matter for yourself, then?

A. If it isn't, they lied to me.

Q. Who was it that lied?

A. Harold Hilts and T. C. Sibert.

Q. Did you make any effort to ascertain if it was true?

A. I did not pull an audit of their books to see if it was true.

Q. Did you make any effort to ascertain the condition of your company? A. Yes.

(Testimony of Charles P. Brewer.)

Q. For the two months after you came?

A. I don't understand that.

(Question read.)

A. Yes, it was in very bad condition.

Q. You mentioned Mr. Taylor. Do you know whether he had a contract or not?

A. I don't know anything about his relationship with Paramount.

Q. You spoke about Mr. Osborn had gone broke on his contract.

A. I don't know.

Q. You said that he had gone broke.

A. I said that they got him in debt.

Q. If I recall correctly, you used the word "broke."

A. Well, I don't know what their relationship was now, but T. C. Sibert asked me, after I made the trip to California in November, [220] to go to Seattle and see about it, that Osborn was taken back off his franchise and put on a \$250 a month drawing account, because he was over in debt, and Mr. Sibert asked me to go up there, which I did.

Q. You went up there? A. I did.

Q. Did you make a success of Mr. Osborn's business?

A. I didn't make any success of anything up there.

Q. Nor here either, did you? A. Yes.

Q. Is Mr. Osborn still with the company?

A. To the best of my knowledge, he is.



(Testimony of Charles P. Brewer.)

Q. You said, I believe, on your direct examination you had made no list of the customers that you had formerly served when acting as agent for the Paramount Pest Control Service?

A. I made no list from there, to take away from there.

Q. As a matter of fact, you took the books home, didn't you?      A. I didn't.

Q. You took them home and made a list from them, both as to the account and as to the name of the patron?      A. I did not.

Q. Where did you get the list that you compiled in your answer, when you identified 141 former customers of Paramount taken over by yourself?

A. What do you mean by list or listing? I took them from a list [221] that I made up from our books, Brewer's Pest Control.

Q. How did you know, then, that they were former patrons of Paramount Pest Control, unless you had some record?      A. By memory.

Q. You remember 141 accounts of Paramount Pest Control Service?

A. What do you mean, remembered 141?

Q. I am just using that word. What did you mean by remembering?

A. You are asking me about the list that I made that you called for in the notice to produce?

Q. Yes.

A. Is that the one you are referring to?

(Testimony of Charles P. Brewer.)

Q. Yes.

A. I took those from Brewer's Pest Control books.

Q. How did you know they were also patrons of Paramount Pest Control Service?

A. Because we had been servicing them, according to my memory, over eighteen months period of time. If a name is called, I can at least remember the name.

Q. Will you now name the 141 former patrons of Paramount Pest Control Service?

A. If you will put the 141 names in front of me where I can see them, I can.

Q. You cannot remember them without you have aid from your own records?

A. I can't remember 141 names here at the present moment, unless [222] you put a list of people in front of me. Then I can call off those that we had serviced as Paramount.

Q. You had your own records when you did call off these names?

A. I didn't have to have my records. If I remember a name, I can——

Q. Then, the reason that you remember, if you do remember, that you had 141 names is because your business is comprised almost entirely of those patrons that you had served under the Paramount Pest Control Service?

A. No. A big per cent of our customers had never heard of Paramount Pest Control Service.

(Testimony of Charles P. Brewer.)

Q. What per cent?

A. I didn't figure the percentage.

Q. Do you mean to tell the Court that you do not know what percentage of your business was from these Paramount Pest Control people, and what percentage was not?

A. I don't know the percentage of what was formerly Paramount and what was not. I was not interested in percentages.

Q. Would you say that a majority of your customers were also customers of Paramount?

A. A majority of them.

Q. What would that amount to, between 80 and 85 per cent?

A. I would say no to that.

Q. Referring to the franchise, it is your position that the franchise went on as it was written until Thanksgiving in the [223] following November?

A. It did.

Q. Nobody made any change in it during that period of time?

A. None whatsoever.

Q. When did you first see the franchise, the form of franchise agreement?

A. Some time after the 25th of June, 1946, when Mr. Sibert took a franchise or a copy of some franchise that they had, to copy off one so that they could have it for me to sign.

Q. Did you read it then?

A. I read it, yes.

Q. You signed it when? How much later?

A. It was signed effective July 1st. I wouldn't know the exact date, somewhere between three and four days before that.

(Testimony of Charles P. Brewer.)

Q. Was it signed by Mr. Fisher at the time that you signed it?           A. No, it wasn't.

Q. Did you see anything which was unfair in your contract at the time you read and subsequently signed it?

A. I saw everything unfair about it.

Q. Why did you sign it?

A. I was out of a job if I did not sign it, and I was in a strange town.

Q. Your position is that you claim you were forced to sign that?           A. Practically, yes.

Q. Under duress? [224]           A. Practically.

Q. Why didn't you plead you were under duress, if you were?

A. I did. He told me I would either sign it or else I was out of a job.

Q. Why didn't you plead it in your complaint here, your answer rather?

A. As far as I know, I did.

Q. Of course, you know you did not.

Mr. Bernard: I don't think counsel should argue with the witness. I object to it.

The Court: Go ahead.

Q. (By Mr. Rankin): When did you first consider that this contract was no longer an agreement that you had to live up to?

A. I first considered it as of no value whatever to me, or them, around July 25th somewhere, somewhere around there.

Q. What year?           A. 1947.

(Testimony of Charles P. Brewer.)

Q. On July 25, 1947, that is about the date you sent in your resignation?

A. That is the date I sent in—around that date that I sent in this letter confirming my resignation.

Q. At that time you had come definitely to the conclusion that the contract was not one that was binding on you or Paramount?

A. I considered it not worth the paper it was written on.

Q. Did you so consider it in February or March of 1947? [225]

A. I did, at the time Harold Hilts told me I was going to have to pay 20 per cent.

Q. All right. Which time did you consider the contract of no validity, in February or March of 1947, or in July, 1947?

A. For about two days in March I considered it no good until I got that letter, explaining it, and then I considered it absolutely no good in July.

Q. For two days in March, 1947, you thought the contract was all right?

A. I thought their word was all right.

Q. How about the contract?

A. Their word modified the contract.

Q. Did you make any payments under this contract?      A. Which contract?

Q. The one we will call the franchise.

A. I made three or four payments on it.

Q. The first one was when?

A. Around—I don't know the exact date, but somewhere around March 6th. I believe.



(Testimony of Charles P. Brewer.)

Q. Didn't you make your first payment February 6th?      A. Maybe that was the date.

Q. That check is in evidence. That shows \$338 and \$250 being allocated to the franchise.

A. It does.

Q. Did Mr. Hilts ask you for that? [226]

A. He did not.

Q. You paid it voluntarily?      A. I did.

Q. And when you paid the \$250 and put on it "for franchise," you referred to what?

A. To the franchise.

Q. To the franchise?

A. To the franchise payment I would have to make to Paramount.

Q. That is, on the 20-per cent basis?

A. It was on the franchise, on the franchise payment, on a 50-50 basis.

Q. A 50-50 basis?

A. It had already been modified in November.

Q. It is your position that that modification continued to operate after December 31st?

A. It was my notion that it did.

Q. Did you make another payment labeling it "franchise"?      A. I did.

Q. That was the 6th of March, 1947?

A. I believe it was.

Q. That was the sole payment of \$250 which you applied on the franchise?

A. That is right.

Q. Then you made a third payment on March 13, 1947?      A. I did. [227]

(Testimony of Charles P. Brewer.)

Q. And that was for the odd figure of \$494.25?

A. What is that?

Q. That was for \$494.25. That made the total payment \$994.25? A. It did.

Q. You designated it "on franchise"?

A. I designated it that was all on franchise.

Q. Can you reconcile any sum of money that you considered to be due on a 50-50 operator's basis with the sum that you paid?

A. No, or I would have never given him the \$494 check and told them I was done.

Q. But you did give them the check?

A. I did.

Q. You want this Court to now understand that when you gave them that check you knew it was money that you did not owe?

A. I gave them the check, as far as I was concerned—you say for money that I didn't even owe to them? Yes, I do.

Mr. Bernard: Objected to, your Honor.

The Court: Sustained.

Q. (By Mr. Rankin): What was your reason for terminating the agency agreement or franchise of July 1st when you wrote your letter of July 24, 1947?

A. I don't understand that.

(Question read.)

A. Will you clarify that a little bit?

Q. Why did you terminate your franchise agreement? [228]

(Testimony of Charles P. Brewer.)

A. Why did I terminate my franchise agreement?

Q. I have asked you three times, Mr. Brewer.

A. I am trying to understand the question.

Q. Yes. I think it is very simple. Why did you terminate your franchise agreement of July 1, 1946?

A. Because I figured their word was no longer good, nor would they live up to it.

Q. What word do you refer to?

A. To the modification of the contract.

Q. In what particular?

A. On the 50-50 basis.

Q. That is, Paragraph 5 of the contract which calls for the 80-20 basis they had told you, under your theory, would be divided on a 50-50 basis?

A. They did.

Q. And, when they didn't live up to that, that is the reason you canceled your contract?

A. That is entirely the reason.

Q. What do you mean, entirely?

A. There was no other reason.

Q. That modification, as you term it, occurred in November, 1946?      A. It did.

Q. Just what was that modification?

A. That modification was to break off from the 20 per cent because the business would not cover it, and it would be split—— [229]

Q. What was the modification, not its effect, but what was the modification?

A. That they would split with me the net profit, if any, 50-50.

(Testimony of Charles P. Brewer.)

Q. Did Mr. Sibert talk to you anything about taking money home?      A. Not especially.

Q. Did he say that when you took any money home, if you remitted the same amount to him you could go on, using the balance in the establishment of your business?      A. Not in those words.

Q. Did he say that in substance?

A. He said if I got a dollar he would get a dollar.

Q. Was any provision made in the agreement that you describe for building up the business?

A. Yes.

Q. What was to be devoted to building up the business?

A. If you are speaking of the Eastern Oregon run—

Q. No, I am speaking of the business generally.

A. I was to use the money that I started the business on and what I could glean out of it as we built the business up.

Q. What you could what?

A. Glean out of the profits.

Q. How much could you glean out? How much could you devote to building the business up, yourself?

A. Well, everything that I could get out of it.

Q. You were going to take all the money you could get out of [230] the business, except what you took home, and then the additional amount that you were to pay Paramount, is that it?

(Testimony of Charles P. Brewer.)

A. I don't understand it. Repeat that, please.

Q. You say that you were going to pour back into this business whatever you did not need for yourself and Paramount? Is that right?

A. That is right.

Q. So that if you took a dollar home, then you were going to give Paramount an equal amount of money, and the balance you were going to use in the establishment of your agency. Is that correct?

A. I don't understand just what you mean in this respect. 50 per cent of the net profits was to be split, yes.

Q. Then, your answer to my question is "No," is it?

A. That is what I am afraid of. I was trying to understand.

Q. You need not be afraid.

A. I want to understand it before I say so.

Q. So, your answer is "No"?

A. All right.

Q. When you sent in your letter of July 24, 1947, your letter of termination, why didn't you give the 90 days called for in the contract?

A. Because I knew if I gave them that 90 days, they would move in here with a dozen men and take over possession of everything in sight, and I would be left sitting here broke. [231]

Q. You knew of that provision in the contract?

A. I did.

Q. You purposely avoided it for the reason you have just stated?           A. Yes.



(Testimony of Charles P. Brewer.)

Q. In reference to the June accounting of 1947, do you recall whether or not Mr. Hilts and Mr. Sibert talked over this whole matter with you at that time?

A. They never pulled an accounting.

Q. Did you see them on June 17th?

A. They never pulled an accounting on June 17th.

Q. Well, to make this very short: Did you hear Mr. Sibert and Mr. Hilts testify about what happened on June 17th?      A. I did.

Q. What they have said is not correct?

A. Right.

Q. When was that accounting had, then?

A. It was some time after the 25th day of June. Excuse me. Hilts came back from Spokane, got into the office with keys that I had left, got his rough draft or whatever he pulled, took it to California and called Mr. Sibert's home at nine o'clock at night. I never did see that paper.

Q. You never saw what paper?

A. The final draft.

Q. Did you ever see any statement of the business done to [232] June 30, 1947?      A. I did.

Q. Where was that?

A. That was in the office, here in Portland, around July 9th or 10th.

Q. Did you go over the figures then with Hilts?

A. No, not completely. I glanced at them and did not approve of them.

(Testimony of Charles P. Brewer.)

Q. You made a payment?

A. I made a payment.

Q. Why did you make a payment if you did not approve of it?

A. Because Mr. Hilts told me they were very much in need of money, and he would like to take some money home and couldn't I give him a check to take back.

Q. So you gave it to him out of charity towards the corporation?      A. No charity.

Q. Why did you pay it if you did not owe it?

A. Because I was still in debt a certain amount of money to Paramount and any money that I gave him was to apply on that debt.

Q. Referring to Exhibit No. 36, can you turn to it there?      A. I have it.

Q. Is that ink endorsement there of a payment of \$259.61 your endorsement?

A. It is. [233]

Q. You gave Mr. Hilts a check——

A. ——for that amount. I did.

Q. ——for that amount?      A. Yes.

Q. That was \$256.61, wasn't it?

A. Check No. 413, \$259.61, it says here.

Q. \$259.61?      A. Yes.

Q. Now, you testified on direct examination, I believe, that you determined to go into business for yourself on the 15th day of August. You meant July, did you not?

A. I believe I said somewhere around the 20th or 25th of July.

(Testimony of Charles P. Brewer.)

Q. That is July?           A. Yes.

Q. Who owned this business from August 1, 1947, to August 27, 1947?

A. The assumed name was in my wife's name, but we owned it.

Q. I didn't ask you that question.

A. We owned it.

Q. "We?"                   A. My wife and I.

Q. Did your wife understand that she owned it?

A. She certainly did.

Q. Did you understand that you had an ownership in it, too?           A. I did. [234]

Q. Why did she make the record that she was the sole owner of it?

A. An assumed name blank, that is filled out regardless of whatever business you go into; you have to file an assumed name certificate.

Q. That does not answer my question. When you had a part-ownership in it, why did you have your wife sign that she had the ownership alone?

A. I was busy working. I didn't want to take the time off and go through all the red tape that there may be connected with it.

Q. You know that record was false?

A. It was not false.

Q. You had an ownership in it, you say?

A. I could have an ownership in it. There is a community property law in the State of Oregon.

Q. You did have an ownership in it, you say?

A. I did.

(Testimony of Charles P. Brewer.)

Q. Why didn't you file it?

A. Whatever is hers is half mine, isn't it?

Q. Why didn't you make a recording to that effect?

A. The assumed name did not call for that.

Q. The blank calls for it. Look at it. "True Names \* \* \* of the persons conducting, having an interest in." It calls for the names of all parties who are interested in the business.

A. My daughter is interested in it. [235]

Q. How old is she?

A. She is fourteen.

Q. Why didn't you put her on the assumed name certificate?

A. Because we did not consider it necessary.

Q. It was not done, I take it, for the reason that you did not want Paramount to know that you were going into a competitive business?

A. They would have known I was going in with her name or mine or both.

Q. You mean by that, even if she did file the certificate by herself, they would know you would be back of it?

A. They would know or anybody else would know that it was our business.

Q. As a matter of fact, Mr. Brewer, you intended to go into this business long before the 25th or anywhere near the latter part of July, didn't you?      A. I didn't.

(Testimony of Charles P. Brewer.)

Q. You intended to take over the business of Paramount Pest Control Service because you were the only person that the customers of Paramount knew?

A. That is not so.

Q. Consequently, you placed your order for business cards with your printer as early as the first part of July, 1947, didn't you?

A. If that is on the statement, I can't help it. I don't remember [236] any dates.

Q. Do you recall that as early as July 7, 1947, you placed Order No. 8564 with Allard J. Conger, doing business as Conger Printing Company, on the East Side, for 1500 business cards, in the name of Brewer's Pest Control?

A. I don't remember dates.

Q. You don't remember what?

A. I remember that I ordered cards from him some time, any time up to and including now, from Conger's. I don't remember any dates.

Q. What were those cards? What did they say?

A. Just said "Brewer's Pest Control" with the representative's name on it, if they are business cards you are speaking of.

Q. Did you not, on the same date, July 7, 1947, enter Order 8561 for service orders?

A. I don't know.

Q. Will you say you didn't?

A. I said I didn't know.

Q. Don't you know what you did? You have testified about other details here.



(Testimony of Charles P. Brewer.)

A. You are asking me for dates. I don't know dates.

Q. I am asking you if you put in service orders to——

A. I put in service orders, yes.

Q. You put in an order, I mean, to this very printer for service order forms, didn't you? [237]

A. I did.

Q. Did you not, on July 7, 1947, or before the date of your termination of this agreement, put in Order 8522 to Allard J. Conger for receipts?

A. I don't know.

Q. Why don't you?

A. Because I don't know what date I put it in.

Q. I said on any date before your termination?

A. I put in an order. I don't know the date.

Q. Was it before your letter of resignation?

A. I don't remember.

Q. You say you don't remember? You did not—  
Would you say you did not?

A. I wouldn't say.

Q. Did you, on or about July 7, 1947, or at any time prior to your letter of resignation, place with Allard J. Conger Order No. 8503 for a large number of service slips?      A. I don't know.

Q. Were not all of these orders put in long before your payment of July 9, 1947, of the \$259.61?

A. I don't know.

Q. At the time you put in these orders or made that payment, did you tell any member of the Para-

(Testimony of Charles P. Brewer.)

mount Pest Control Service that you were preparing to take over this business yourself?

A. I did not. [238]

Q. Why not?

A. I was not preparing to take over any business.

Q. What were you doing with these orders?

A. If I had placed the orders, it would have been going into business.

Q. And if you had placed the orders and if you were intending to go into business, why wouldn't you tell Paramount Pest Control Service, if you were honest about it?

A. Would it concern Paramount if I went into business?

Q. Why, definitely.

A. I had told both Hilts and Sibert I would go ahead during the month of July, carry it during the month of July.

Q. Carry what?

A. Carry the business during the month of July.

Q. We will come back to that in a moment. But why didn't you tell them you were preparing to go into business for yourself? You knew you were?

A. I told Hilts I would not get out of the pest control service when I told him that I was through with Paramount, end of July.

Q. Did you not want, by these forms that you were getting out, these business cards, service or-

(Testimony of Charles P. Brewer.)

ders, receipts and slips, want the customers of Paramount Pest Control Service to think this was identically the same service that was going on except with the change of name?

A. I didn't want them to think anything bad about anybody. [239]

Q. That is not my question.

A. I didn't understand your question.

Q. I think you did.

(Question read.)

A. No, I didn't.

Q. But did you not hand to this printer the forms of Paramount Pest Control Service, with corrections on the Paramount forms to conform to your new proposed business?

A. Yes, I probably did.

Q. You know you did, don't you?

A. All right, I did.

Q. Why didn't you say so?

A. Because I didn't understand just about your dates there.

Q. Didn't you order them in the early part of July, 1947, for the purpose of having them on hand when your resignation became effective on August 1, 1947?

A. I don't know the exact date that I ordered them.

Q. Didn't you order them to have them on hand so you could take over this business?

A. I did have them on hand.

(Testimony of Charles P. Brewer.)

Q. Now, then, can you give the Court a very much better idea of when you determined to take over this business?

Mr. Bernard: Object to that, your Honor—if the Court please. He is assuming a state of facts the witness has not testified to. [240]

The Court: He may answer.

(Question read.)

A. Well, I can't give the date.

Q. Give the circumstances.

A. I told Hilts around July 9th or 10th, when he filled out this statement that he presented to me——

Q. (By Mr. Rankin): I am not asking you what you told Hilts. I am asking you for your mental process when you determined to take over this business.

A. I don't know. I am trying to tell you when I more or less started to make up my mind. I don't know the exact time.

Q. When did you make up your mind?

A. I don't know the exact date, but it was made up completely by the 20th to 25th.

Q. Were you incurring the expense of all these orders without having made up your mind that you were going to take over this business?

A. If they were placed by that time, then, I was taking on the bills for it personally.

(Testimony of Charles P. Brewer.)

Q. Then if they were placed as early as July 7th, how long before that would you say you made up your mind?

A. Possibly I could have done so when I told Sibert I was through after the end of July.

Q. Through where?

A. Through with the company. [241]

Q. You told you were going on through during July?

A. I told him I would run it during the month of July.

Q. Yes. When did you and your wife discuss the matter of terminating your agency?

A. I don't remember the date; some time in July.

Q. It was not until July that you and your wife discussed it?      A. Nothing definite, no.

Q. When was it first suggested between you and Mrs. Brewer that you terminate your agency?

A. When I told Sibert I would stay with it during the month of July.

Q. Wasn't it previously discussed with her?

A. No.

Q. Will you please answer my question? It will save a lot of time. When did you and your wife first discuss the termination of this agency?

A. After I had told Sibert that I would carry on the business during July.

Q. What date was that?

A. It was some time around the end of June, after the first day of July, in his home in Oakland.



(Testimony of Charles P. Brewer.)

Q. When did you discuss with Mr. Duncan that you were going to take over this business?

A. You keep referring to taking over the business. I didn't take over the business. [242]

Q. What did you do?

A. I went into business for myself.

Q. Isn't that just another way of saying you would take over all of Paramount's business you could get?

A. No.

Mr. Bernard: Object to the question. It is argumentative.

The Court: He may answer.

A. There is lots of new business started up in the State of Oregon, and I went after that. We didn't take over anybody's business.

Q. (By Mr. Rankin): Do you know whether or not you are under obligation not to solicit?

A. I don't know about anything concerning that.

Q. You were aware of the provision in your franchise that you were not to solicit customers of Paramount?

A. I was.

Q. Did it mean anything to you?

A. Not after they would not keep their word with me.

Q. When did you discuss going into business for yourself with Rightmire?

A. I told him I was going into business some time around the first of August.

Q. When did you tell him you were going into business?

A. Some time around the first of August.

(Testimony of Charles P. Brewer.)

Q. And he did not know prior to that, prior to the first of [243] August, that you were going into business for yourself?

A. As far as I knew, he didn't.

Q. Then you would be the only one that would tell him, or would your wife?

A. I would have told him.

Q. You did not take it up with Rightmire until August 1st, is that right?

A. I don't know just the exact date.

Q. You have been pretty definite in all other things.

A. I know the last week of July he was on vacation. I didn't see him the last week of July.

Q. That may be, but didn't you talk it over earlier in July, before he ever went on his vacation?

A. I don't remember.

Q. And as important a matter as your breaking your franchise and going into business for yourself does not leave an impression on you as to when you told Rightmire you were going into business?

A. It does not.

Q. When did you discuss with Merriott the fact that you were going into business for yourself?

A. I think it was around the first of August.

Q. So, while you placed all these orders for Brewer's Pest Control, you did not lay any grounds for the servicing that you were going to require with any employees that you subsequently had until August 1st, 1947? [244]

(Testimony of Charles P. Brewer.)

A. I would have done all my own service work if I hadn't had any employees.

Q. I say, you did not make any arrangement until August 1st, 1947?

A. No definite arrangement.

Q. Did you make any indefinite ones?

A. I don't know. There may have been a word said, but there was nothing deliberately specified.

Q. Sort of a general understanding?

A. No, I wouldn't say that.

Q. Was "Brewer's Pest Control" in the telephone book,—Was its number in the telephone book when you left the services of Paramount Pest Control Service?      A. No.

Q. How would all the customers that you had previously served in the name of Paramount know where to find Brewer's Pest Control?

A. They would have had to call Brewer's Pest Control.

Q. Individually?      A. Right.

Q. Did you tell those customers to call you at your home number?

A. I only talked to a very few customers.

Q. Answer the question.

A. What customers?

Q. Paramount's customers.

A. I never told Paramount's customers to call me at any time. [245]

Q. Did you ever let them know the number on these 1500 business cards that you were having printed to put out?      A. I did.

Mr. Rankin: No further cross-examination.

(Testimony of Charles P. Brewer.)

Redirect Examination

By Mr. Bernard:

Q. I want to ask you one or two questions. Did you order any cards, forms or anything prior to the time you had been notified that on the first of July you would have to go back on the 20-80 basis?

A. I did not.

Mr. Bernard: I think that is all.

Mr. Rankin: That is all, your Honor.

(Witness excused.)

The Court: I am sorry to have to make a little explanation about my own circumstances. I imagine it won't be satisfactory to you gentlemen. Mr. Lyon is here from Los Angeles. I have to hear him some time today, as well as opposing counsel in a patent case. Then tomorrow I cannot hear you at all, due to an emergency matter that has arisen in the court. I can resume this case on Friday and continue over to Saturday, if that is necessary.

Mr. Bernard: That will be quite satisfactory to me. In fact, for reasons of my own, I was going to have to ask the Court [246] not to run too late this afternoon anyway.

The Court: Mr. Rankin, may we have your concurrence in resuming this matter on Friday?

Mr. Rankin: I know how busy this Court is. While, as the Court correctly prophesied, it is not satisfactory, it will have to be done because I know

the compulsion that the work of this Court is under. If your Honor will just designate when to report, that will be satisfactory.

The Court: We will resume Friday morning and, if necessary, run Saturday as well.

(Thereupon, an adjournment was taken until 10:00 o'clock a.m. Friday, January 23, 1948.)

Court reconvened at 10:00 o'clock a.m., Friday, January 23, 1948, pursuant to adjournment.

ALLARD J. CONGER

was thereupon produced as a witness on behalf of plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Rankin:

Q. Your name is Allard J. Conger?

A. Yes.

Q. Where do you live, Mr. Conger?

A. 2030 Southeast Harrison, Portland.

Q. What is your business?

A. Printing and lithographing, sir.

Q. How long have you been so engaged?

A. Since 1918.

Q. Do you know Mr. Brewer?

A. Just as a casual customer, yes.

Q. When did you first know him?

A. I believe—Oh. I think it was the beginning of 1947, as far as I can recall.

Q. Did you ever do any printing for him?

A. Yes, sir.



(Testimony of Allard J. Conger.)

Q. What did you do?

A. Oh, various small forms, cards and stationery.

Q. Have you any record of those jobs?

A. We always keep a complete record of all work done.

Q. I would like to hand you, Mr. Conger, certain exhibits in this case known as 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74 and 75, and ask you if you can identify any of those exhibits and your having anything to do with them?

A. Yes. Those are all checks that cleared through our bookkeeping department and the work here, I believe, was all produced in our plant.

Q. When was that done?

A. Well, it was during 1947.

Q. Can you give the Court a more specific date?

A. I will have to refer to our records here in order to do that. Succeeding dates, July 7th——

Q. Did he place an order with you on July 7th?

A. That is the date the order was placed.

Q. What order was placed on July 7th?

A. Service orders, 2,000 service orders.

Q. What were those? Can you identify among the list of exhibits the one you classify as a service order?

A. Yes, sir. It is this form here, and so states on the heading, "Service Order."

Q. Can you refer to an exhibit number? There is a stamp on it in the lower right-hand corner, I believe.

A. Exhibit No. 70. [249]

(Testimony of Allard J. Conger.)

Q. Exhibit No. 70?           A. Yes.

Q. There were two thousand of those?

A. Yes.

Q. What was the next order?

A. The next was another order on July 7th, receipts in duplicate.

Q. Do you find among those exhibits a copy of a receipt that you printed?           A. Yes, sir.

Q. What exhibit number is that?

A. Exhibit No. 67.

Q. Exhibit No. 67?           A. Yes.

Q. How many of those receipts did you print?

A. 2,000 sets, in duplicate.

Q. What was the next order?

A. The next order was also July 7th was 5,000 service slips.

Q. 5,000 service slips. Do you find any exhibit number there covering service slips of that character that you printed?           A. Yes, sir.

Q. What exhibit number is it?

A. Exhibit No. 68.

Q. Exhibit No. 68?           A. Yes. [250]

Q. What other order, if any, did you receive from Mr. Brewer?

A. There is quite a few here on succeeding dates. July 7th, 2,000 statements; July 11th, I should say.

Q. Were there any more on July 7th?

A. No, that is all entered on July 7th.

Q. I direct your attention to Order 8564 for 1,500 business cards. What was the date of that order?           A. That was July 7th.

(Testimony of Allard J. Conger.)

Q. July 7th? A. Yes, sir.

Q. How many of those business cards did you print? Is that the correct number, 1,500?

A. 1,500, sir.

Q. Do you find any exhibit number for a business card among those exhibits that were handed to you? A. Yes, sir.

Q. What is the exhibit number of that?

A. No. 69.

Q. 69? A. Yes.

Q. When did you deliver the wares or goods made under these July 7th orders?

A. They were delivered at different dates.

Q. When was the first date of delivery?

A. The first date of delivery was July 14th on the 1,500 cards. [251]

Q. Those were the business cards represented by Exhibit 69? A. Yes, sir.

Q. Were all of those products delivered at various times thereafter?

A. Yes, sir, various dates.

Q. Did you render him a statement for them?

A. They were rendered, yes, later in the month.

Q. But you did render statements?

A. Yes.

Q. And were they paid?

A. Very promptly paid, yes.

Q. And the checks that are in evidence there are the checks you received in payment for the printing service that you have described, is that correct?

A. Yes, that is correct.

(Testimony of Allard J. Conger.)

Q. How did you get the forms from which to do that printing that you have described?

A. They were furnished by Mr. Brewer.

Q. Have you those forms?

A. I may have some of them.

Q. Will you produce all you have, please?

A. There (indicating) is a copy of the business card, service order and receipt. That is all I have with me.

Q. May I see them?           A. Yes. [252]

Q. Mr. Conger, I would like to hand you the card of the Paramount Pest Control Service with Charles Brewer, as manager, and ask you if that is a form that you refer to as having used from which to draw Mr. Brewer's business cards?

A. Not necessarily. That was a copy of their card. I believe that was brought along more for style. The pencil written copy here, I believe is the one that was followed, instead of the type.

Q. But he offered it to you at the time for the style of the card?           A. That is right.

Mr. Rankin: We wish to offer that in evidence.

The Court: Take everything over to Mr. Bernard. You have not seen these things, have you?

Mr. Bernard: No, we have not, your Honor.

Mr. Rankin: I had not seen them before, either.

Q. I hand you what purports to be a copy of a service order for Paramount Pest Control Service with "Paramount" and "Service" and other matters stricken out and "Brewer's—" I don't know what that is. "Brewer's" is written over it.

(Testimony of Allard J. Conger.)

I will ask you if that material was given to you— if that is the material that was given to you, as you describe, for the purpose of drawing Mr. Brewer's contract form.

A. Yes. This particular form was used as copy, with the changes indicated. [253]

Mr. Rankin: We offer that in evidence.

Q. If I understand your testimony correctly, you said you had also drawn a large number of receipts, and I hand you this receipt, originally of the Paramount Pest Control Service, with "Paramount" and "Service" stricken out and "Brewer's Statewide" Pest Control or "Brewer's Statewide" written over it, and ask you if this is the form from which you made Mr. Brewer's receipts?

A. Yes, sir, that is the case. That is the copy that was used.

Mr. Rankin: We offer that in evidence.

Q. Have you had any talk with Mr. or Mrs. Brewer since the first of the week?

A. He was in the office, I believe, yesterday.

Q. Did he see you? A. Yes.

Q. What did he want?

A. He wanted to confirm the date of the purchase order of these items.

Q. Did you confirm it with him?

A. I did.

Q. Was there any other conversation?

A. I believe not.

Mr. Rankin: That is all. You may cross-examine. [254]



(Testimony of Allard J. Conger.)

Cross-Examination

By Mr. Bernard:

Q. When did you say Mr. Brewer was in?

A. Yesterday.

The Court: Do you have any objection to them?

Mr. Bernard: No, I have not, your Honor. I have no objection.

The Court: They are all admitted. Do you want to give them exhibit numbers before Mr. Bernard cross-examines?

(Copy for business cards furnished Conger Printing Company thereupon received in evidence and marked Plaintiff's Exhibit No. 78.)

(Copy furnished Conger Printing Company for service order thereupon received in evidence and marked Plaintiff's Exhibit No. 79.)

(Copy furnished Conger Printing Company for receipt thereupon received in evidence and marked Plaintiff's Exhibit No. 80.)

Mr. Rankin: The service order is here; the receipt is here; the business card is here, but I do not find the service slip. We had it here and he described it as 5,000. Where has it gone? Have you got it over there?

Mr. Bernard: No, we haven't got it. [255]

A. I believe it is in this bunch. I don't believe I gave you a copy of the service slip. I do not have that one here.

(Testimony of Allard J. Conger.)

Mr. Rankin: You do not have a copy of that?

A. No, I just havé the three. The three was all I brought in.

Q. (By Mr. Bernard): Would you examine Plaintiff's Exhibit No. 79 and tell whose handwriting that is up at the top?

A. I believe that is my office manager's handwriting.

Q. As a matter of fact, you did not take this order at all, did you? One of your employees did?

A. I believe that is correct.

Q. That order was put in on what date?

A. July 7th.

Q. Then the order placed on July 7th was placed with one of your employees?

A. I believe that is right.

Mr. Bernard: That is all.

### Redirect Examination

By Mr. Rankin:

Q. You then printed these slips in accordance with the order, did you? A. That is right.

Q. And Mr. Brewer received them?

A. Yes, sir.

Q. He made no objection to them? [256]

A. No, sir.

Q. And the only direction you had was that which you have indicated as to how those orders were to be compiled? A. That is right.

Q. Did Mr. Brewer sign your order book in any way?

(Testimony of Allard J. Conger.)

A. We keep a record of receipts in the office. I haven't those available here.

Mr. Rankin: That is all. Just a moment. For your information, after this is all over and the Court has finished with them, I will be glad, on your request, to have these returned to you for your files, if possible.

A. Thank you. It is not too important if they are not returned.

The Court: That is all. Step down.

(Witness excused.) [257]

### G. H. HANSEN

was thereupon produced as a witness on behalf of plaintiff and, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Rankin:

Q. Give your name to the Court, please.

A. G. H. Hansen.

Q. Is that P. H.?           A. G. H.

Q. Where do you reside?

A. In Portland.

Q. What is your occupation?

A. I am District Agent for the U. S. Fish and Wild Life Service.

Q. How long have you been such?

A. I have been in Oregon since September, 1945.

Q. Were you in that service prior to that date?

A. I have been in that service since 1931.

(Testimony of G. H. Hansen.)

Q. Do you know Charles P. Brewer?

A. No, I don't. I don't recall ever having met him.

Q. Do you have anything to do with a common poison known as 1080?           A. Yes, we have.

Q. I should not say "common." It is not. Do you have anything to do with a poison commonly known as 1080?

A. Our field men, as well as myself, after being authorized [258] by our central office, are permitted to use it under certain circumstances, under proper regulations within the State of Oregon.

Q. Are you the head of the department here?

A. I am the head of that department that uses that material.

Q. Is it a common poison on the market?

A. No, sir, it is not.

Q. How do you buy it?

A. We requisition it, on approval from the central office, from our Pocatello supply depot.

Q. There is testimony in this case, given by Mr. Brewer here, that in July of 1947 he went to the Fish and Wild Life Department in the Weatherly Building and purchased one pound of a poison known as 1080, for which he paid \$8.00.

Do you find any record of such a purchase?

A. We are not permitted to sell 1080.

Q. Well I would like to get an answer to that question. Do you find any record of his having made a purchase?

A. No, there is no record in our office.

(Testimony of G. H. Hansen.)

Q. You say you are not permitted to sell 1080?

A. That is correct.

Q. Will you explain to the Court why?

A. 1080 is definitely a hazardous poison to handle. The research people don't know too much about it yet. So far as we know, there is no antidote and it is not supposed to be available [259] to the general public until more is known about this poison as it is used.

Q. Are there means by which established concerns can purchase that poison?

A. I understand that established persons can purchase it direct from the company that manufactures it.

Q. You were previously advised by us, were you not, that Mr. Brewer had claimed to make this purchase from your department in the Weatherly Building? A. Yes.

Q. What department is that in the Weatherly Building?

A. The Fish and Wild Life Service office in the Weatherly Building is our regional office, and they handle all fiscal matters that pertain to the six or seven western states in the Northwest.

Q. Do they have 1080 on hand to purchase there?

A. They don't handle 1080 in the Weatherly Building.

Q. Did you make inquiry of the office to ascertain whether that is correct or not?

A. I called them last night and they have no records of ever having it over there.



(Testimony of G. H. Hansen.)

Q. Suppose an application had been made at the Weatherly Building for the purchase of 1080, what would have happened to that application?

A. That would have been referred to our office over here in [260] the Pioneer Post Office Building.

Mr. Rankin: That is all.

#### Cross-Examination

By Mr. Barnard:

Q. Was your office formerly in the Weatherly Building?

A. Our office was formerly in the Weatherly Building.

Q. When did you move?

A. It will be two years this April.

Q. How many employees are there over there in the Weatherly Building?

A. We have at the present time two office girls and Mr. Boomhower who is in charge of law enforcement, and Al Moore who is with the research division.

Q. What men were over there in July, 1947?

A. The same men that I have just named.

Q. Those are all of the men that were over there in July?

A. That is correct.

Q. Is there a man by the name of McDonald over there?

A. McDonald?

Q. Yes.

Q. There is a McDonald in the Weatherly Building, not in our office.

(Testimony of G. H. Hansen.)

Q. I meant to ask you about the personnel over there in the Weatherly Building. What men were there in July, 1947, in the Weatherly Building?

A. I don't know all the employees in the Weatherly Building.

Q. About how many men are employed over there?

A. Most of them are bookkeepers. There are, I think, four or five regional inspectors and the regional director and the assistant regional director.

Q. There was a man by the name of McDonald over there?      A. Yes. He is still there.

Q. What is his position there in that office?

A. He is in charge of Federal refuges in this region.

Q. What do you people use this 1080 for?

A. We use it on rat control work and predatory animal control work.

Q. You do not sell any of it?      A. No.

Q. Or are not supposed to sell any of it?

A. We don't sell any, no.

Q. Did you ever get any of it over there?

A. No.

Q. This 1080, in what shape does it come to your office?

A. The packages that we have received are half-pound containers with the manufacturer's label on them.

Q. What manufacturer?

A. The Monsanto Chemical Company.

(Testimony of G. H. Hansen.)

Q. I am not going to take this out of the sack, but look at that can and that sack and tell if that is the kind of cans [262] this comes in to your department?

A. Yes, the kind of cans which the manufacturer shipped it in.

Q. And the can—the kind that come to your office?

A. Yes, sir.

Mr. Bernard: Do you want to look at it?

Mr. Rankin: Will it hurt me if I look at it?

A. No, sir, it won't hurt you.

Mr. Bernard: That is all.

### Redirect Examination

By Mr. Rankin:

Q. This can says, "Don't breathe dust or get on skin." That is true, is it?

A. Yes.

Q. Use rubber gloves?

A. That is recommended, yes.

Q. And that is the Monsanto Chemical Company?

A. The Monsanto Chemical Company.

Q. It has marked on it "Fatal Poison" with the skull and crossbones and "Fatal Poison" all in red.

A. Yes.

Q. Is Mr. McDonald, to your knowledge, permitted to sell 1080?

A. No, to my knowledge he is not.

Q. Would you know if he were permitted to sell it?

A. Yes, I would be advised if he was permitted to handle it or sell it. [263]

(Testimony of G. H. Hansen.)

Q. Have you ever been advised that McDonald has any right to sell 1080?           A. No, sir.

Q. There is one question I should have asked you on direct examination and, with the Court's permission, I would like to ask it now.

Did Mr. Brewer come into your office in the last few days, to your department?

A. The young ladies in the office report Mr. Brewer was in yesterday, day before yesterday.

Q. For what purpose?           A. To obtain—  
Mr. Bernard: That would be hearsay.

Mr. Rankin: He is in charge of the office.

The Court: Answer the question.

A. To obtain some 1080.

Mr. Rankin: Did he get it?

A. No, he didn't get it.

Mr. Rankin: That is all.

### Recross Examination

By Mr. Bernard:

Q. Can you tell me the name of any of the other men over there in that office?

A. In the Weatherly Building?

Q. Yes. [264]

A. Well, I don't think I would be permitted to, under the regulations of the Department. I don't think I would be. I don't think I should answer that.

Q. Can you tell me about how many of them there are over there?

(Testimony of G. H. Hansen.)

A. There are four or five regional inspectors; there is the administrative office; there is the regional directors and the assistant regional director and some clerical help.

Mr. Bernard: That is all.

Mr. Rankin: That is all.

(Witness excused.) [265]

### C. W. FISHER

was thereupon produced as a witness on behalf of plaintiff and, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Rankin:

Q. Your name is what? A. C. W. Fisher.

Q. Where do you live, Mr. Fisher?

A. 2400 Tenth Street, Berkeley, California.

Q. What is your business?

A. Pest control.

Q. By whom are you now employed?

A. By the Sully-Van Corporation.

Q. Were you ever employed by Paramount Pest Control Service? A. Yes, sir.

Q. You were in the employ, were you, of the Paramount Pest Control Service in July, 1947?

A. Yes, sir.

Q. Did you at that time see the defendant, Charles P. Brewer? A. I did.

Q. Where did you see him?



(Testimony of C. W. Fisher.)

A. Saw him at the Paramount Pest Control office, 519 Northwest Park in the evening, around 5:00 p.m., July 30, 1947.

Q. Did you see him anywhere else that evening?

A. Yes. [266]

Q. Where?

A. We had dinner and spent the entire evening together, Mr. and Mrs. Brewer and myself.

Q. Whereabouts?

A. First, we drove from the office out to his home here in Portland, on 28th Avenue, I believe it is, and, on our arrival there, Mrs. Brewer and Mr. Ray Rightmire were in the kitchen visiting, and Mr. Brewer was very happy to see Mr. Rightmire there because he had just returned from a few days' vacation.

Q. I should ask you, Mr. Fisher: Are you any relation to any of the officers of the Paramount Pest Control Service?

A. Yes, sir, I am.

Q. What relation, and to what member?

A. A brother to G. H. Fisher, one of the owners of the Paramount Pest Control Service.

Q. Did you, on this evening that you describe in July, when you met Mr. and Mrs. Brewer and Mr. Rightmire, have any discussion with those gentlemen and that lady?

A. Yes, sir.

Q. Did that discussion relate to why Mr. Brewer was leaving Paramount?

A. It did.

Q. Will you begin at the beginning and briefly, but fully, as fully as necessary, tell what was said

(Testimony of C. W. Fisher.)

in relation to Paramount and their leaving Paramount? [267]

A. The first discussion—Mr. Rightmire stated that he was glad he had taken a vacation because if he hadn't taken it then he would not have had it as a member of the Paramount Pest Control Service, and there was a little discussion at that time. Mr. Rightmire left, and Mr. and Mrs. Brewer and I returned to the Roosevelt Hotel, where I was staying, and we had dinner at the Roosevelt and, immediately after dinner, we retired to my room there.

Q. How long was it discussed with Mr. Rightmire in the Brewer home?

A. Just a few minutes, ten or fifteen minutes, possibly.

Q. Do you know what he was saying there?

A. He was telling of his vacation trip that he had just returned from.

Q. Whom was he telling that to?

A. Mrs. Brewer, when we arrived, and he told Mr. and Mrs. Brewer and myself about it.

Q. After you had finished your dinner, where did you go, you and Mr. and Mrs. Brewer?

A. We went to my room in the Roosevelt Hotel.

Q. About what time did you go to your room?

A. Some time between 9 and 10 o'clock.

Q. How long did they remain discussing the matter with you in your room at the Roosevelt Hotel at this time?

A. Until after midnight. [268]

(Testimony of C. W. Fisher.)

Q. Did they tell you they were leaving Paramount?      A. Yes, sir.

Q. Did they give you any reason why?

A. They did.

Q. Could you briefly give what they said regarding leaving Paramount?

A. They said that the Paramount organization, and particularly Mr. Sibert, had not lived up to his promises to them and that they were leaving the organization and, within the eyes of Paramount, they would be the worst so-and-so's in the world as of August 1st because they were not only leaving the organization and going into a competitive business, but they were also taking all the Paramount employees with them into their business.

Q. Did you ever see Mrs. Brewer in the office of the company?      A. Yes, sir.

Q. What was she doing there?

A. Done the office work, bookkeeping and answering the telephone and so forth.

Q. Did she engage in this conversation you are describing?      A. She did.

Q. Did you know who were in the employ of Paramount at the time they said they were taking the employees with them?      A. Yes.

Q. Who were they? [269]

A. Mr. Carl Duncan and Mr. Raymond Rightmire and Mr. Merriott.

Q. Do you know whether or not, from any subsequent knowledge that you had, they did go with Mr. Brewer?      A. Yes, sir.

(Testimony of C. W. Fisher.)

Q. What else, if anything, was said regarding their leaving? May I strike that, please?

You said they were taking the employees with them. Was anything else said about the date on which they would leave Paramount? A. Yes.

Q. What was that?

A. They said they were and they had been collecting all the money that was on the books that they could possibly collect and that if, on August 1st, there was more than a dollar or two in Paramount's account they would be very lucky.

Q. Who would be very lucky?

A. Paramount Pest Control Service.

Q. Do you know how much was in the Paramount Pest Control account? A. No, sir.

Q. Was there anything else said about Paramount Pest Control conditions after they would leave? A. No, sir, not that I recall.

Q. Why did they select August 1st as that time?

Mr. Bernard: Objected to as calling for a conclusion [270] of the witness.

The Court: Answer.

A. Will you repeat the question?

Q. (By Mr. Rankin): Why was August 1st mentioned? You say "after August 1st." Do you know why August 1st was mentioned?

A. May I explain it in this manner?

Q. If you wish.

A. My arrival here was purely coincidental. I had been traveling throughout the State of Washington and had just arrived in Oregon, establishing

(Testimony of C. W. Fisher.)

distributors for Sully-Van. Mr. Sibert and Mr. Fisher own most of the stock in that corporation. At that time I was working in that capacity and, when I arrived here on July 30th, Mr. Brewer asked me how long it had been since I left the Oakland office, and I told him approximately two and a half weeks, so he said, "You don't know the news, then."

I told him I didn't and he said he had sent a letter of resignation, previous to the date of my arrival, to the Oakland office, which would take effect on August 1st, 1947.

Q. And that is the reason August 1st was mentioned?           A. Yes.

Q. Was anything said about the condition Paramount would be in after the bank account had been reduced and the employees taken away, as to their rehabilitation? What was said on that score? [271]

A. It was said that Paramount would be in no position to take care of their accounts for some months to come.

Q. Who said that?

A. Mr. Brewer, because they would not have any equipment or stock, nor would they have any experienced personnel in this area and, not being familiar with the accounts and not having the equipment that our former employees had, it would be a few months before we would ever be able to regain our status, at that particular time.

Q. Was anything said about where they were establishing their office?           A. Yes.



(Testimony of C. W. Fisher.)

Q. Where was that?

A. In the home, here in Portland.

Q. What did they say about that?

A. Well, about all there was—they would have—they would establish their business in their home temporarily.

Q. You mentioned something about equipment. What did they say about equipment?

A. Well, that they intended to keep the equipment and chemicals until they had been paid for that equipment, and that the usual procedure with Paramount would be that Paramount would take some time to do that, and they were going to keep it until they had received their money that was due for that equipment and chemicals. [272]

Q. Did they tell you the amount they claimed to be due from Paramount to them?

A. No, sir.

Q. Did they say whether or not they had tried to get it and had been denied?

A. Repeat the question.

Q. Did they say anything about whether they had tried to get their money and it had been denied them?

A. No, sir.

Q. Do you know of Mr. Hilts coming in, anywhere in this conversation?

A. Not this conversation, no.

Q. When did you first see Mr. Hilts?

A. Around 4:30 of July 31st in the hotel; he had registered in at that time.

(Testimony of C. W. Fisher.)

Q. That was the next day?           A. Yes.

Q. Were you present when Mr. Hilts and Mr. Brewer met?           A. I was.

Q. What was said in Mr. Brewer's presence?

A. Mr. Brewer was in the lobby and he called my room. A few minutes before that Mr. Hilts had called me, having just registered, and, as soon as Mr. Brewer arrived in my room, I telephoned Mr. Hilts' room and asked him to join us because Mr. Brewer had arrived. [273]

Q. What was said in his presence, Mr. Fisher?

A. Mr. Hilts, upon entering the room, walked over to Charlie and shook hands and said that this was a bombshell in their organization and particularly in the home office in Oakland, his resignation as of August 1st, and they and no one else could understand the reason for his attitude.

Q. What did Mr. Brewer say?

A. Mr. Brewer said that he supported and financed Paramount, or the Oregon territory, as long as he possibly could and he was getting out now for self-preservation.

Q. Was anything said in Mr. Hilts' presence about who might be going with Mr. Brewer in this new undertaking of his?           A. No, sir.

Q. What did you do after that with respect to the equipment, if anything?

A. The following morning, August, Mr. Hilts and I went to the office and, upon arrival in the office, we found some canceling letters and complaints, cancellation letters.

(Testimony of C. W. Fisher.)

Q. Whom were those cancellation letters from, do you recall?

A. One in particular that I recall was the Hudson-Duncan Company account.

Q. Here in Portland, Oregon?

A. Yes, sir.

Q. Go ahead, please, with your statement of what you did.

A. Another complaint that I recall was the Zellerbach Paper [274] Company here.

While we were there, Mr. Hilts instructed Mr. Celsi—I believe that is the man's name in charge of the warehouse—to not permit any of the former employees into the office or into the warehouse without his consent because we had taken over from Mr. Brewer and he was no longer with the Paramount Pest Control Service and, upon this remark, Mr. Celsi said he couldn't restrain any of Mr. Brewer's men or Mr. Brewer from the warehouse because he had made the lease and had paid the rent.

There was some question, so Mr. Hilts instructed this gentleman to advise Mr. Brewer to come down to the warehouse, and that we would be back shortly after this complaint call, because that matter must be settled.

So, at approximately 2:00 o'clock in the afternoon Mr. Brewer and Mr. Duncan met Mr. Hilts and I in the warehouse and at that meeting Mr. Brewer instructed Mr. Celsi not to permit us into the storeroom until he personally had given consent

(Testimony of C. W. Fisher.)

for us to do so, so, to alleviate the responsibility placed on this man who more or less did not know just what to do, we told him we did not want access to the warehouse or any of the stuff in the warehouse until the entire matter had been settled.

Q. How long did you remain at Portland, Oregon, at this time?      A. About thirty days.

Q. What were you instructed to do, if anything?

A. Primarily I took care of cancellations of contracts.

Q. You were the first man to engage in an effort to understand these cancellations?

A. Yes, sir.

Q. How long were you here as the only man doing that?

A. Mr. Hilts arrived the next day.

Q. Did Mr. Hilts work with you in trying to retain the company business?

A. In several cases, yes; not entirely.

Q. Who had the greatest number of calls to make in that regard, you or Mr. Hilts?

A. Myself.

Q. How long were you here without any further assistance except that of Mr. Hilts, in the capacity you have described?

A. Until Monday in the afternoon.

Q. What would be the date, approximately? How many days, approximately, was that?

A. I would say it was August 4th.

Q. Who came then?      A. Mr. Sibert.

(Testimony of C. W. Fisher.)

Q. Did Mr. Sibert make any calls on any of these customers?

A. Not to my knowledge.

Q. Did you, at any time subsequent to that, make any calls on any other customers of Paramount Pest Control Service in an effort to retain the Paramount business? [276]

A. Yes, sir.

Q. Who?

A. Mr. Elfers and I went to the Albers Milling Company.

Q. Anybody else?

A. Mr. Elfers, Mr. Hilts and myself were the only three; we worked together.

Q. Will you describe to the Court whether or not there were many cancellations coming in following August 1, 1947, and what you did with respect to those cancellations that did come in?

A. Well, I couldn't keep up with them. The first account I called on was on Friday or Saturday, I guess, on August 1st—whatever the 1st of August was. I am a little confused there. On August 1st I called, immediately after finding the letter of cancellation, on the Hudson-Duncan people. It was sent by Mr. Lacey, so I called on that account and talked to Mr. Lacey. It is the general practice of our company, when we have a cancellation, to determine the reason for the cancellation, and I had found that they had given the account to Brewer's Pest Control. That was before noon on August 1st.



(Testimony of C. W. Fisher.)

Q. August 1st?           A. Yes.

Q. Go ahead and describe in a general way—not too long or too much in detail—about what you generally did in connection with cancellations that came in, and what your investigation showed. [277]

A. I called on between twenty-five and thirty accounts, and the direct result in every instance—it resulted in better than eighty cancellations because in those twenty-five or thirty calls there were such accounts as the Safeway organization and other companies which had a number of stores that were under contract for service with our company.

Q. To summarize, what were your findings as to the cause of the cancellations?

A. The same type of service with the same servicemen, knowing the accounts that had been with Paramount, was to continue and take care of them, and they would receive the very fine service that they had had as the Paramount Company, but it would be in the name of Brewer's Pest Control instead of Paramount.

Q. I hand you, Mr. Fisher, Exhibits 54 and 55 that relate to the list of customers and ask you if these lists represent any of the customers that you had had any dealings with? You have seen them before, haven't you?           A. Yes.

Q. This list of customers?           A. Yes, sir.

Q. At that time, did you call any of these that are cancelled here?           A. I did.

(Testimony of C. W. Fisher.)

Q. Without going into the detail of picking them out, what you describe as to their termination applies to those that you called upon?

A. The Dairy Co-op cancelled.

Q. Yes; but I say what you describe in general, does that apply to all of these?

A. Yes, in every case.

Q. There are some letters in there that seem to bear the initials, "CWF" or "C. W. Fisher." Have you looked through and determined whether those are your letters in reply to the cancellations?

A. Yes.

Q. What was your effort, and how did you go about endeavoring to hold this business?

A. Well, I would like to relate one specific instance, and that is more or less general.

Q. Yes.

A. Albers Milling Company, which had been an account of ours for several months—I called on them the morning of August 4th; it was Monday morning, with Mr. Elfers. On August 1st the account had been serviced by Brewer's Pest Control, and Mr. Flanagan showed me the service slip of Brewer's Pest Control signed by their servicemen—it was either Mr. Merriott or Mr. Rightmire, I am positive about that—that they had been serviced on August 1st.

So we inquired of Mr. Flanagan why Brewer's Pest [279] Control serviceman serviced the account when we had a contract with them and he said he

(Testimony of C. W. Fisher.)

didn't—he was not there when the service was rendered and that somebody else had signed the slip, and that he would find out at the time of the next call why they were servicing the account because, as far as he was concerned, he was under contract with Paramount Pest Control Service.

Q. Did you find any other accounts that were served by Brewer on August 1st, 2nd or 3rd, or immediately after the 1st of August?

A. Yes, sir.

Q. Do you have any idea how many of those accounts there were that were serviced immediately after August 1st?

A. Everyone I had called on, practically.

Q. Did Mr. Brewer make any appearance at the Paramount Pest Control office at this time?

A. On two or three occasions he was in to see Mr. Hilts with reference to a settlement.

Q. You were not present when those discussions were had?           A. No, sir.

Mr. Rankin: You may cross-examine.

### Cross-Examination

By Mr. Bernard:

Q. At this time in July when you came to Portland, July 30th, you were employed then by Paramount Pest Control Service? [280]           A. No.

Q. Whom were you working for then?

A. Sully-Van Corporation.

Q. You went to work for Paramount about August 1st?           A. On July 30th, I went to work.

(Testimony of C. W. Fisher.)

Q. As I understand it, out at the house that night you found Mr. Rightmire talking to Mrs. Brewer and he said he was lucky he had got his vacation, or something of the kind?

A. He said he took his vacation at that time because, if he hadn't, he would not have had it as an employee of Paramount Pest Control Service.

Q. Then you went over to the hotel, you and Mrs. Brewer and Mr. Brewer, and had dinner, and then went up to your room?

A. That is correct.

Q. Did you know up to that time that Brewer was leaving Paramount?           A. Yes, sir.

Q. He advised you that he had resigned, was leaving, saying that Mr. Sibert had not lived up to his contracts with him?           A. That is correct.

Q. Did there seem to be some feeling on Mr. Brewer's part?           A. Very definitely.

Q. When, if you know, did Paramount Pest Control Service get control of the warehouse concerning which you have spoken?

A. I don't understand your question. [281]

Q. When did Paramount Pest Control Service procure possession of the warehouse, concerning which you have testified? Do you know that?

A. On Tuesday morning; I think it is August 5th. Mr. Sibert had met Mr. Brewer in the hotel the night before and Mr. Brewer consented to give us the keys to the warehouse the following morning.

(Testimony of C. W. Fisher.)

Q. You testified that prior to that time Mr. Brewer had been in several times for a settlement?

A. Not prior to that time.

Q. Prior to August 5th?

A. Not prior to that time.

Q. Afterwards?           A. Yes, sir.

Q. Do you know anything about the negotiations back and forth that led to the surrender of the warehouse by Mr. Brewer on the 5th?

A. Only that meeting in Mr. Sibert's room at the Roosevelt. He confirmed he would give him access to it the following morning.

Mr. Bernard: That is all.

(Witness excused.) [282]

DeGREY S. BROOKS

was thereupon produced as a witness on behalf of plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Rankin:

Q. Your name is DeGrey S. Brooks?

A. Yes, sir.

Q. Where do you live?

A. 5728 Northeast Fifteenth Avenue, Portland.

Q. How long have you lived there?

A. About two months.

Q. By whom are you employed?

A. Paramount Pest Control Service.



(Testimony of DeGrey S. Brooks.)

Q. Where did you live prior to the time of living here at that address in Portland?

A. Spokane, Washington.

Q. What business were you in in Spokane, Spokane, Washington?

A. I was manager of the Spokane office.

Q. Of what company?

A. Paramount Pest Control Service.

Q. How long, over all, have you been connected with the Paramount Pest Control Service?

A. About two years.

Q. When you came to Portland, Oregon, to take over the service of the company here, where were you living at that time? [283]

A. I was living at the Roosevelt Hotel.

Q. Prior to living here, where were you living?

A. Spokane.

Q. You were engaged in that work at Spokane?

A. Yes.

Q. How did you happen to come to Portland?

A. I came here the 2nd of August on a vacation with my family.

Q. When were you directed to take over the Portland office, as you describe?

A. I took over the Portland office about the 1st of September, I would say, although I arrived here on the 11th of August.

Q. You arrived here on the 11th of August?

A. The 11th of August and was put directly in charge of the office on or about the 1st of September.

(Testimony of DeGrey S. Brooks.)

Q. You were here about the 1st of August?

A. Yes.

Q. But that was on your vacation?

A. Yes.

Q. Did you meet Mr. Brewer or anyone connected with Mr. Brewer or any of these defendants on August 1st, on the 1st of August or thereabouts?

A. On the 2nd of August I met Mr. Brewer at the Roosevelt Hotel.

Q. What happened there at that time? I wish you would just [284] state what occurred.

A. I had just arrived in town with my family on vacation and was in the hotel about a half hour when the telephone rang in my room. I answered it, and it was Mr. Duncan, calling from Mr. Brewer's room.

Q. Is that Mr. Carl Duncan?

A. Mr. Carl Duncan, yes.

Q. One of the defendants in this case?

A. Yes, sir.

Q. Go ahead.

A. Mr. Duncan—I had asked Mr. Brewer to reserve a room for me, because that is how they happened to know I was coming out here, so they asked me if I would not come up and spend the evening. I didn't want to, but I agreed to later on and, after a little while, I went over to their room.

Q. What time did you go to their room?

A. I would say 7:30 or 8:00 o'clock.

(Testimony of DeGrey S. Brooks.)

Q. How long did you remain?

A. I stayed until about 9:30.

Q. Did you have any conversation with anyone there?      A. Yes, sir.

Q. Who?

A. Mr. Brewer and Mr. Duncan and Rosalie Brewer, Mr. Brewer's wife.

Q. Just state what that conversation was, the detail of it. [285]

A. When I first went in there, it was sort of a social thing for a few minutes, and then Mr. and Mrs. Brewer started talking about Paramount Pest Control Service, sort of running it down in a way, and they went on for a little while. I asked them what the trouble was and he said, "You don't know?" He said, "You don't know that we and Paramount have severed negotiations?" And I said, "No."

He said, "I am not with Paramount any more," and I said, "I am sorry to hear that. What happened?" Well, he didn't tell me so much about what had actually happened. The whole trend of events was trying to discourage me against the Paramount.

Q. What did they say? What was the conversation leading to that?

A. They told me what had happened to them; that they had put all their money into this business and so forth, and Mrs. Brewer, on a number of occasions, would look over at me and say, "For

(Testimony of DeGrey S. Brooks.)

God's sake, don't ever owe Paramount any money because they will put the damper on you," or words to that effect, indicating that Paramount was going to get me next, and, the fact of the matter is, Mr. Duncan took a 5-cent piece that he asked me for and I gave it to him, and he placed an additional 5-cent piece with it and at least five times that evening he would point to this 10 cents and give me about six months, and he would bet a drink of beer with me that I would [286] be out of Paramount.

Q. Did they say what they were going to do?

A. They told me they were going to take a vacation. Mr. Brewer told me he was going to take a vacation for six weeks and then didn't know what he was going to do. He said he had had a number of offers, one particularly from the Ardee Maintenance Company, and he would probably accept one of them.

Q. What is the Ardee Maintenance Company engaged in?

A. Competitive pest exterminating.

Q. Pest control?           A. Yes.

Q. Was anything else said by them that evenings?

A. Well, nothing whatever—it was just sort of a program to try to win me over to their way of doing, that they had really been harmed by Paramount Pest Control—

Mr. Bernard: I believe, your Honor, that this witness should be required to state what was said and not to draw conclusions.

(Testimony of DeGrey S. Brooks.)

The Court: Go ahead, and tell your story.

Q. (By Mr. Rankin): Did Mrs. Brewer take any part in the conversation?

A. Well, a number of times she spoke up and laughed and said, "Don't ever get in debt to the Paramount people," and about after an hour and a half I got tired of it and told them the best thing to do is to leave good friends, which I did, [287] but Mrs. Brewer said a number of times, "No use trying to get Mr. Brooks to see our side of it. He is a Paramount man." That was said a number of times there during the evening.

Q. What did Mr. Duncan say, if anything, about their severance?

A. Nothing much outside of trying to collect 10 cents for his beer.

Q. Did they say when they were going into business?

A. He told me he was not going into business.

Q. Who told you that?           A. Mr. Brewer.

Q. Did Mr. Duncan say whether or not he was going into business?

A. No, Duncan told me he didn't know what he was going to do, that he was going to take a couple of weeks' vacation and go down to the wedding of an aunt or somebody in the south, and when he came back up here he would then make a decision.

Q. Did Mrs. Brewer have anything to say about what her future would be?           A. No, sir.



(Testimony of DeGrey S. Brooks.)

Q. Did you talk with them again after this occasion?

A. I only saw Mr. Brewer once, and he came up to my office looking for Mr. Hilts.

Q. Did he discuss at that time anything about leaving Paramount?      A. No, sir. [288]

Q. Have you told the Court, Mr. Brooks, every reason that they gave for leaving Paramount?

A. Well, they just simply said that they had had an injustice done to them, they were busy spending their money, they had put thousands of dollars into Paramount and had gotten very little remuneration from it and they just had enough of it.

Q. Did they say anything about taking the help away from Paramount to you?

A. No, sir, they didn't.

Q. When did you start in? Did you start in subsequently to this on the work of trying to overcome the cancellations?

A. I arrived here the 11th of August and from then on I started working on cancellations.

Q. That was the 11th of August, 1947?

A. That is right.

Q. What did you do in an endeavor to stop cancellations?

A. Well, we called on them as fast as they would come in. If it was a letter or if it was a phone call, the boys had to turn in reports on their service calls on cancellations of this kind and

(Testimony of DeGrey S. Brooks.)

I tried, as soon as possible, to contact all of them and find out their reasons for canceling.

Q. Why would you do it?

A. A general custom with Paramount Pest Control, if you lose an account. We want to know whether it is the serviceman's fault or whether the service has been bad. We want to [289] know whether the customer is satisfied or not.

Q. How long did you work on the matter of overcoming these cancellations?

A. I am still working on them.

Q. Have you been in the employ of Paramount Pest Control Service here ever since?

A. Yes, sir, with the exception of just occasionally running over to Spokane.

Q. Is that continuous employment here?

A. Yes, sir.

Q. Can you state, as a summary of these accounts that you have contacted, what the reason is for their cancellations?

A. The general reason has been very much the same in all cases, those that I have contacted personally. It seems as if the men who were servicing them were doing a good job, and these same men would still come, and the only part that was a little unethical was the fact that these same men, in many instances, would go in and service the account and walkout, have a slip signed, and the customer didn't know that it was not Paramount. There was no mention made of the fact that this was Brewer's Pest Control. The service was ren-

(Testimony of DeGrey S. Brooks.)

dered by the same man who had been coming there, and when they came in again to do the service, why, then he went ahead and did his work and had a slip signed. If the customer did not know that there had been a change in name, they could have gone on [290] and on and on.

Q. Did you make any general inquiry as to what, if any, representations were made?

A. Yes, there were many representations made.

Q. What were those?

A. You want me to name the customers?

Q. I don't think that is necessary now. As a general summary, give what those representations were that caused the cancellations, if any?

A. The fact that some of the servicemen, in some instances, would go in and say the company was dissolving.

Q. What do you mean by "company"?

A. That we are not going to continue in business; we are discontinuing business up here.

Q. What do you mean by "company"?

A. The Paramount Pest Control Service.

Q. That the Paramount Pest Control Service was dissolving?

A. Yes. In other cases he would go in there and service the account; if it was the same man, they never thought about it.

Q. Anything else you can think of that your investigation showed as to the reasons for cancelling Paramount contracts?

(Testimony of DeGrey S. Brooks.)

A. No, other than that the same personnel was serving these accounts and that Mr. Brewer or his representatives would walk in and say they were taking the account over on such and such [291] a date, and it would be known as Brewer's Pest Control Service.

In one case, particularly, they told the man that they were taking over, and that we were discontinuing business, that Paramount Pest Control Service was not a company, it was a trade name, they were changing their forms to Brewer's Pest and, instead of paying a royalty on this trade name, Control, and in each case they gave the man a discount on the regular cost of his services to prove that they were saving him a little money.

Q. As manager in charge of this office, Mr. Brooks, did you have any cancellations that called for any repayment of money?      A. Yes, sir.

Q. Describe those, please?

A. We had a number—In fact, we have got several thousand dollars on the books of moneys still due on accounts that are unpaid, if that is what you mean.

Q. Did they write in and say, "We have had your service and we don't owe you this money"?

A. Oh, yes.

Q. Did you have any cases where there was a repayment by you to the customer? Did you have any cases where there was a repayment by you to the customer who had already paid for the service?

(Testimony of DeGrey S. Brooks.)

A. Not repayment. We gave him credit for service, and rendered service for which we got no bonus. [292]

Q. Why not?

A. Why—Well, it had been paid in advance; they had paid up several months, those where they had paid several months in advance; that happens lots of times.

Q. Had nothing to do with Brewer?

A. No, had nothing to do with Brewer.

Q. Did you have any cases where you had to remit to them because Brewer had done the service and you had not done it and you remitted any part that had been paid?

A. No. I have not refunded any money.

Q. As manager of the office, did you find all the records there when you come to the office to start work there?

A. I found records but I wouldn't say that the records were complete.

Q. Why not?

A. Well, for our service routings, the cards the men turned in as to where to go on certain dates, and so on, they were many of them blank. There was the name of the customer on there but there was no way of determining whether they had had service or not. In other cases, the cards were dated up in September and October—you could not get any detail from them, and we had to go to the ledger and look them up and work our routings over from the ledger.



(Testimony of DeGrey S. Brooks.)

Q. Did you find any substitutions in your records, where the original records are gone and something substituted for them? [293]

A. Just had cards with the names on but didn't have any detail whether they were accounts or anything. I wouldn't say whether it was substituted or what happened. That was the way Mr. Brewer had run the office.

Mr. Rankin: You may cross-examine.

### Cross-Examination

By Mr. Bernard:

Q. As I understand it, you talked with Mr. and Mrs. Brewer on the evening of August 2nd?

A. I believe so.

Q. And you want the Court to understand that he did not tell you at that time that he was in the pest control business?

A. No, sir, he didn't.

Q. Did you see Mr. Wendy Fisher about that time? A. I did, sir.

Q. Did Mr. Fisher ever tell you he had told him on July 30th that he was going into the pest control business?

A. Mr. Fisher didn't tell me that until after I had seen Mr. Brewer.

Q. There seemed to be quite a lot of feeling that night on the part of Mr. and Mrs. Brewer?

A. That is right, sir.

(Testimony of DeGrey S. Brooks.)

Q. They said they had been treated badly by Paramount Pest Control Service; in other words, in your own words, I believe you said the net result was that they said an injustice had [294] been done them.

A. Yes, sir.

Q. And Mr. Brewer, particularly, was quite worked up over the proposition?

A. Yes, sir.

Q. You have testified that a certain unnamed man told you that somebody told them that the reason Brewer was taking over was because Paramount was dissolving. Will you give us the name of this customer or former customer of Paramount who told you that?

A. The Sugar Bowl in The Dalles.

Q. Who up there told you that?

A. The manager and owner of the Sugar Bowl.

Q. What is his name?

A. I don't know what his name is. I would have to look it up.

Q. Who else told you that?

A. I think that is sufficient.

Q. You mean that is sufficient, or is that the only one?

A. That is a case that can be tested, taken up and the man will verify it.

Q. I am asking you to give us the names of any other former customers who ever made that statement to you?

A. I will say that is the only one that made that particular statement.

(Testimony of DeGrey S. Brooks.)

Q. Is that the one who made the statement also that Paramount [295] was really just a trade name here, just using the trade name "Paramount"?

A. That is correct, sir.

Q. Separate and apart from those, you told the Court that several customers or former customers had told you Paramount was dissolving. Will you give us the names of any customers or former customers, or customer, who told you that anybody connected with Brewer said Paramount was dissolving?

A. Peasley Transfer Company, Mr. Davidson, Boise, Idaho.

Q. Where in Idaho?

A. Boise, Idaho.

Q. Who else?

A. The manager of The Dalles Hotel in The Dalles.

Q. Who was it? Do you know his name?

A. I don't know his name.

Q. Who else?

A. I think that is all I can recall right offhand.

Q. Did anybody in Portland tell you that?

A. I didn't really do much in Portland. Mr. Fisher was working Portland and I was working out in the country on the Eastern run when I first came up to this job.

Q. Did you talk to Mr. Flanagan of Albers Milling Company?

A. No, sir, I didn't.

Q. Whose deposition was taken the other day?

A. No, sir, I don't remember him now. [296]

(Testimony of DeGrey S. Brooks.)

Q. You spoke about the index cards. You said that some of these cards or as to some of these cards the dates did not appear; it did not appear on what date the customer was supposed to be serviced, is that it? A. That is right, sir.

Q. You do not want the Court to understand that there were some of the records of Paramount Pest Control Service that had been taken out of that office? A. They were not in the office.

Q. What records?

A. We had an index file in which we have a 5 by 7 card that is marked up by months, January, February, March and so forth, and every time a serviceman does a job he comes in and makes his report on his service card. The office girl will take that and post that on the index card so that when the man makes his rounds again he knows the last time he has been there or when it has been serviced, in order to keep our service uniform.

Q. Anyway, some of these cards at that time did not happen to show the date?

A. That is right, sir.

Q. You did not find any cards of any customers missing, did you?

A. Well, I wouldn't say, no. I can't remember no names.

Q. You said some of these cards had been dated up to September [297] and October. What did you mean by that?

A. There would be many cards with the name on it, the service contracts that we had on our books,

(Testimony of DeGrey S. Brooks.)

and the date of the last call would be September or October, which was two months prior to the time——

Q. You could understand by looking at it that those calls had not been made, of course?

A. I didn't know whether they were made this year or last year.

Mr. Bernard: I think that is all.

### Redirect Examination

By Mr. Rankin:

Q. I should have asked you one other question. Referring to Exhibits 54 and 55, you have seen these before?

A. Yes. I don't know which ones you are referring to, though.

Q. Exhibits 54 and 55. A. 54 and 55?

Q. Who compiled these lists, do you know?

A. These lists are compiled in our office by the bookkeeper.

Q. Under whose direction?

A. Under my direction and also I would say Mr. Walt Moore who had something to do with them.

Q. Did Mr. Hilts have anything to do with them?

A. Sir?

Q. Mr. Hilts. There are letters in there marked "DeGrey [298] Brooks." Can you identify those as copies of the originals that you originally signed?

A. Yes, sir. Those are letters acknowledging cancellations of contracts.



(Testimony of DeGrey S. Brooks.)

Q. Generally speaking, wherever that name or initials appear, they are letters written by you, is that correct?      A. That is right, sir.

Mr. Rankin: That is all.

Recross-Examination

By Mr. Bernard:

Q. Can you give me the name of the man who was supposed to have made these representations to the Sugar Bowl, the Peasley Transfer Company or The Dalles Hotel?

A. The names of the parties themselves?

Q. Yes.

A. They were the owners or the managers of these particular places. I don't know them personally by name.

Q. Did they give you the name of the person connected with Brewer?      A. Never did.

Q. The name of the person connected with Brewer who made this statement?

A. No, sir, they didn't say which man it was. In one instance I believe Ray Rightmire's name was signed to a slip, a service slip, and that was in The Dalles, I believe. [299]

Mr. Bernard: That is all.

(Witness excused.)

## HAROLD W. HILTS

having been previously duly sworn, was recalled as a witness on behalf of plaintiff and was examined and testified as follows:

## Direct Examination

By Mr. Rankin:

Q. Mr. Hilts, you testified the other day to some eleven agencies of the Paramount Pest Control Service. Can you describe more in detail those agencies? You had not completed your statement about them.

A. Yes, sir. There are agents that we have operating under franchises—

Q. The franchises that you described, do they bear any resemblance to the franchise which was had by Mr. Brewer and dated July 1st, 1946?

A. Yes, sir, with the exception of the name of the manager or the man that it was franchised to, and the boundary lines, they are practically absolutely identical.

Q. How many franchises of that identical nature are in existence?      A. Eight.

Q. Are there any franchise managers who have ever gone broke? [300]      A. No, sir.

Q. Have any of them ever made any money?

A. Very definitely so.

Q. Can you give the Court a general idea of the maximum return that has been made under a franchise and the minimum return made under a franchise in your business?

(Testimony of Harold W. Hilts.)

A. The maximum amount of money that has ever been made by any one of our franchise operators, in round figures—I don't remember exactly, but it will run from \$22,000 to \$24,000 annually, a year.

Q. And the minimum?

A. The minimum amount of any one of our operators is upwards of \$6,000.

Q. Have any of those ever resigned or left you?

A. Not at all, sir.

Q. Never once?

A. Not of the eight. We had a resignation of a manager of ours who was operating in Sacramento who made \$14,000 in 1945, and he decided he wanted to become a missionary, so he resigned and left the organization.

Q. He was not broke when he left?

A. Not by a long shot.

Q. What kind of a contract was he under?

A. A franchise contract, the same as Mr. Brewer had.

Q. Mr. Brewer came up under a different kind of an agreement, [301] when he came here. What do you call it?

A. It was a franchise manager's contract.

Q. How many of those do you have in existence?

A. Now?

Q. Yes.           A. Three.

Q. Have any of the franchise managers ever gone broke?           A. No, sir.

(Testimony of Harold W. Hilts.)

Q. Have they made money?

A. Yes, sir, they have. They have made more than wages.

Q. Have you had any of those cancel out or leave the service?

A. Oh, occasionally one does.

Q. With particular reference to Mr. Osborn, did you inspect his books?      A. Yes.

Q. Did you make an audit from them?

A. Yes, sir, I did.

Q. He has returned to Seattle?

A. Yes, he has.

Q. Do you know whether or not he is making money?      A. Why, certainly he is.

Q. Was he ever broke as Mr. Brewer indicated the other day?

A. Not to my knowledge. I have never seen him broke.

Q. Have you continuously inspected his books?

A. His books have never indicated he was broke.

Q. Now, on the matter of damages, state whether or not you have prepared any statement that would indicate the obligations of Mr. Brewer to Paramount?      A. Yes, we have.

Q. Page 14, Paragraph 6, subparagraph (1)(a) of the complaint alleges that there is a balance due Paramount from Mr. Brewer as of June 30, 1947, in the sum of \$3,100. Have you an exhibit that shows that obligation?      A. Yes, there is.

Q. There is produced for your inspection Exhibit 36.      A. Now, I have it.

(Testimony of Harold W. Hilts.)

Q. What is the total obligation shown by that?

A. \$3,359.61.

Q. Was there any payment on that?

A. Yes, there was a payment of \$259.61 on July 9, 1947.

Q. That is the payment you have previously described? A. Yes.

Q. That left a balance of what?

A. \$3,100.

Q. Has that ever been paid? A. No, sir.

Q. Paragraph 6, subparagraph (1)(b) of the complaint is an allegation of a balance due under the franchise for July, 1947. Did you prepare any exhibit to disclose that?

A. Yes, sir, I did. [303]

Q. What is that exhibit? You might look at Exhibit 39. A. 39?

Q. Yes.

A. It must be out of order. I can't seem to locate it.

Q. Here it is, right here. A. Thank you.

Q. What does that show?

A. Shows the total amount due, \$478.15, based on the franchise contract for July, 1947.

Q. For what month? A. July.

Q. For the month of July, 1947? A. Yes.

Q. Where did you get that figure?

A. From the books.

Q. Whose books?

A. From Mr. Brewer's books, the books in the Portland office.



(Testimony of Harold W. Hilts.)

Q. Has that amount been paid?

A. No, sir.

Q. There is a claim here, one for difference between the investment, and the other for fixed assets not turned in as per contract. Are those on the same basis? What about those claims? Look at Exhibits 50 and 51 and explain it to the Court, please.

A. Exhibit 50 is the total amount of assets on the records, less depreciation. The depreciation is figured on the accounting rules [304] set forth by the Federal Government. 51——

Q. 51. I am in error. I have not reached that yet. Explain these two claims, for \$259.63 and \$973.30, as to whether or not they are obligations of Brewer and, if so, how?

A. \$259.63 and \$973.30 interwind with each other. The \$973.30 represents the equipment that was not turned in by Brewer as per his contract.

Q. Have you any exhibit on that?

A. Yes, sir.

Q. What is the exhibit number? Is it 50?

A. Yes, it is. It is the next half of 50.

Q. Have you anything further to state in regard to that?

A. It shows on the exhibit, the second half of Exhibit 50, that there was a 1936 Plymouth car, a "Hi-Fog" exterminator and service unit, a spray rig and a two-wheel trailer, also the additional cost of trailer and one Dobbins pump, single-phase, that

(Testimony of Harold W. Hilts.)

are all recapped in the figure \$973.30. That is, of course, the book value which means the depreciation is figured and figured in as expenses.

Q. The fifth item on page 15 of the complaint, Paragraph 6(e), refers to an expense account of certain items. You say those items amount to what? A. \$925.89.

Q. Have you an exhibit to disclose that?

A. Yes, it is on Exhibit 51. [305]

Q. Explain why that is a charge here.

A. The reason for this being a charge is because they are unsupported expenditures. In other words, checks were drawn, as the exhibit indicates, the check number and the date on which drawn and to whom they were paid, but with no supporting evidence of the expenditure. Therefore, according to accounting procedure, when there is no supporting evidence, they have to be charged. If there is no supporting evidence, it is charged to the owner of the business as his drawing account, under accounting practice.

Q. The next item on page 15 of the complaint, Paragraph 6(1)(f), evidently relates to the Eastern Oregon run. You have testified about this Eastern Oregon expense and the agreement?

A. Yes.

Q. Does this relate to expenditures incurred in the performance of that agreement?

A. Not expenditures, but the income.

(Testimony of Harold W. Hilts.)

Q. Describe it then, in detail.

A. This one, amounting to \$678.50, is one-half of the income that was derived from the Eastern Oregon run as per Mr. Brewer's understanding of a split of the income and expense of that venture, putting on new business. The expense item is shown under the June 30th settlement of \$3,100 and the income we had never received which we were entitled to, and therefore it is in this item.

Q. What exhibit discloses this obligation?

A. Exhibit 51.

Q. Exhibit 51-A, does that have any bearing on it? Does Exhibit 40 or 40-A?

A. 40 and 40-A do not. I will see what 51-A shows. Yes, 51-A indicates the amount of revenue derived from the Eastern Oregon run for the months of February, March and April, giving the number of accounts handled and also the total volume for those months.

Q. (By Mr. Bernard): 51-A?

A. Yes, 51-A.

Q. (By Mr. Rankin): No. 51, does that have any bearing on it?

A. No, sir, 51 is the \$925.89 unsupported.

Q. 51-A is the only exhibits which sets out in detail this Eastern Oregon operation?

A. Correct.

Q. Page 16, Paragraph 6(2)(a), does that explain that? A. Which one is that?

(Testimony of Harold W. Hilts.)

Q. Paragraph 6(2)(a), which reads, “ \* \* \* plaintiff sent men into said territory to interview and hold such accounts as plaintiff could and the action of said defendants, as herein described, damaged plaintiff in the amount of said expense, consisting of \$3,596.95.”

Please explain that, will you?

A. Well, when we found out what had actually happened to us, [307] what had really been done, we had to protect our business, naturally, as any business organization would.

Therefore, we had to import people into the area, experienced men and people familiar with the business, to carry on, and also determine just exactly where we did stand, as far as our accounts were concerned.

We are a service organization. We do not sell a commodity. Therefore, our business is erected around our personnel, and whenever we realize in our business that our personnel is *in way* not right in relation to the customers, then we try to determine what the situation is and, therefore, under the situation that we ran into here in Portland, we were naturally anxious to find out just as soon as possible from all of our customers just where we stood, which has been borne out in earlier testimony. This is the amount involved in bringing people that were necessary here to find this out and to protect our accounts and our business.

Q. Have you made an exhibit for that?

A. Yes.

(Testimony of Harold W. Hilts.)

Q. Have you detailed in that exhibit what the expenditures were for?           A. I believe so.

Q. Look at Exhibit 53 and see if it covers every item that you have mentioned covering expenses in an effort to hold the business? [308]

A. Yes, it indicates my time and that of Andy LePape, Carl Dolby, W. T. Moore, DeGrey Brooks, whom we brought from Spokane, and Mr. Fisher who happened to be here and of course went right on our payroll, and Mr. Elfers whom we brought from Seattle, Mr. Sibert and Mr. G. H. Fisher.

Q. Is that total set forth in Exhibit 53?

A. Yes. The total is set forth. It is set forth in detail, in fact. It indicates the expenses for hotels and meals and automobile expenses necessary to carry on.

Q. How much does that amount to?

A. A total of \$3,596.95.

Q. The next item on page 16, Paragraph 6(2) (b), having to do with contracts having a balance of the year to run. There are in evidence here lists contained in Exhibits 54 and 55 of the contracts that were canceled. Some of these contracts that they had some time to run.

The Court: Recess until 1:30.

(Thereupon the Court was recessed until 1:30 o'clock p.m.) [309]



(Testimony of Harold W. Hilts.)

Court Reconvened at 1:30 o'Clock P.M.

January 23, 1948

Direct Examination

(Continued)

By Mr. Rankin:

Q. Have you the list of accounts?

A. Yes.

Q. You spoke to me during the noon hour of something you wanted to make clear. What was that?

A. I wanted to be clearly understood—I don't think I have made it quite clear—relative to Item 3 of damages. Item No. 3 is contained in Item 4.

Q. So, in place of \$259.63 and \$973.30 there is just the item of \$973.30?      A. That is right.

Q. When we recessed at noon we were about to discuss Paragraph 6(2)(b), on page 16 of the complaint, relating to contracts having a balance of one year to run. Have you Exhibit No. 54?

A. Yes, sir.

Q. Who compiled Exhibit 54?      A. I did.

Q. What does it show as to total?

A. Shows a total of \$4,596.75.

Q. That is \$4,596.75?      A. Yes. [310]

Q. What is that figure?

A. That figure represents contracts that were still in effect and had time to run, after Mr. Brewer's action, and which we lost.

Q. How long did they have to run?

(Testimony of Harold W. Hilts.)

A. Various times. They are enumerated there, the account number, the date of the contract, the amount of the monthly charge, and the balance of the term of the contract, also the balance of the amount of revenue that would have been involved in it.

Q. State whether or not this \$4,596.75 represents the face of the contracts?      A. Yes, it does.

Q. Does it represent the amount of profit that Paramount Pest Control Service would have received?      A. No, sir.

Q. Can you figure the amount of the profit that Paramount Pest Control Service would have received under those contracts that were canceled within the year?

A. Yes. According to our experience rating and the way our business is set up to operate, we could expect 40 per cent profit on the face of these contracts.

Q. How much does it take to process or serve these contracts?      A. 60 per cent.

Q. Is that the accepted standard in your business, or is that [311] something exceptional that you are applying to this case?

A. Not a bit exceptional. It is more or less standard. Sometimes it varies a few points one way or the other.

Q. That is, the total amount, \$4,596.75 represents the face; so far as profit is concerned, it would be 40 per cent of that that would be returned to Paramount?      A. Yes, sir.

(Testimony of Harold W. Hilts.)

Q. How many contracts is that figure based on?

A. I have not counted these contracts. I can say that this item, \$4,597.75, and the next item, \$566.50, represent a total of 185 accounts.

Q. How many of those contracts are admitted by Mr. Brewer in his answer to have been taken over by him?      A. 141.

Q. What are those additional contracts in that \$4,596.75 item that are not admitted by him?

A. Well, there is quite a number of them—44, to be exact, such as Schuster Brothers.

Q. You need not go through an enumeration of the 44. You have testified the cost of those is 60 per cent. Can you break down that 60 per cent any further?      A. Yes.

Q. How?

A. Figure in 60 per cent an average of 38 per cent being for servicing the contracts and 22 per cent being for the overhead [312] operation of the business.

Q. Give a general statement, not too much in detail, as to what is included in overhead.

A. Well, in overhead there is the office girl, advertising, telephone and telegraph, insurance, taxes and licenses, depreciation and quite a number of other items—

Q. That is sufficient.

A. If you will let me refer to the exhibit, I can enumerate them all.

(Testimony of Harold W. Hilts.)

Q. They will inquire further if they wish. Does that overhead continue in spite of cancellation of contracts? A. Yes, sir.

Q. Who paid the overhead?

A. Well, during Mr. Brewer's contract Mr. Brewer paid for it. During our contract, we paid for it—After Mr. Brewer left us, we had to pay for it.

Q. What do you include in the 38 per cent service?

A. There is wages for servicemen, materials and chemicals to be used on the job, traveling expenses, such as hotels, rooms and meals.

Q. As to these contracts, you say after his severance you paid the overhead. How about the service? Did you service these contracts afterwards?

A. No, sir, but we had to have personnel servicing these contracts. [313]

Q. Who took the servicing of the contracts over?

A. We did. We had our organization here.

Q. Yes, but who actually serviced them?

A. Mr. Brewer was servicing the contracts.

Q. Then, in that \$4,500 item, or practically \$4,600 item of damage, all that you were relieved of was the service or 38 per cent?

A. That is correct.

Q. Take the next item on page 16, paragraph (c), contracts exceeding one year to continue on a per-month basis. Pardon me just a moment. Strike that.

(Testimony of Harold W. Hilts.)

That \$4,596.75 item broken down to 38 per cent of that is contained in what exhibit?

A. It is contained in Exhibit 54.

Q. Now, take the next item, contracts exceeding one year to continue thereafter until completed, under the terms of the contract on a month-to-month basis. How many of those did you find that had not expired?

A. How many contracts?

Q. The amount of them is more important.

A. \$566.50. That is just the monthly service involved in those contracts.

Q. Is that set forth in any exhibit?

A. Yes, sir, it is Exhibit No. 55.

Q. Over and above these items, can you advise the Court whether [314] or not the business in general suffered a damage?      A. Yes, sir.

Q. What kind of damage, and can you give an estimate of how much?

A. Well, we suffered a damage of approximately \$1,500 per month, in round figures. We feel that, according to our experience rating, over a period of years' operation, that the accounts which stay on the books over a period of years run 60 per cent, that the customers we retain is 60 per cent. Therefore, on the basis of 60 per cent of \$1,500 would be about \$900 and, taking into consideration the balance of the term of the contract, which would have been eight years and eleven months, we have suffered a damage I feel of \$96,300.



(Testimony of Harold W. Hilts.)

Q. That is over the entire period of time?

A. Yes, sir.

Q. There is a claim by Mr. Brewer of some \$700 and another of some \$1,350. Did you take credit on those into consideration?

A. Yes. That totals about \$2,050, and we have allowed for that.

Q. How?

A. Well, there was the amount of money that Mr. Brewer received and had taken out of the business.

Q. You heard the testimony the other day when he said he had taken out \$1,000 of investment, and how much more? [315]

A. Well, he had taken out approximately, according—According to the records he has taken out over \$4,500.

Q. How much was left in the bank on August 1, 1947, when Mr. Brewer started in for himself, in the account of Paramount Pest Control Service?

A. In accounts receivable?

Q. No, in the bank account.

A. In the bank account?

Q. Yes.

A. Oh, right around \$4.00. There were two bank accounts. One of them was the payroll account and the other was the general account and the total amount left in the bank in these two accounts was around \$4.00.

(Testimony of Harold W. Hilts.)

Q. How much did he draw in July, 1947, do you know?

A. Over \$1,000, \$1,017 and something.

Q. Some time at the beginning of this trial, Mr. Sibert mentioned Mr. Brewer's visit to his home when he purchased airplane tickets for Mr. Brewer, and Mr. Brewer says he purchased those himself.

Will you, very quickly, give a statement as to whether you looked that matter up and what you found?

A. Yes, I checked the checks which Mr. Brewer claims in his testimony had been drawn for these airplane tickets. There are three checks. In fact, one of them was to pay for a tire and the other one was for \$50, and the other one was for \$100. [316] The one for \$100 was drawn the day after Mr. Brewer had left Portland for Oakland.

Q. Are these the three checks mentioned by Mr. Brewer?

A. Yes. They are numbered 398, 399 and 400.

Q. Did you look up the record as to the airplane tickets that were purchased?

A. Yes, sir. They were purchased by Mr. Sibert from his personal credit, and I happened to be present when he was doing so.

Q. Were they billed to Mr. Sibert?

A. They were billed to Paramount Pest Control Service. This credit is in the name of Mr. Sibert of Paramount Pest Control Service.

(Testimony of Harold W. Hilts.)

Q. The Paramount Pest Control Service paid for them, according to the record?

A. Yes, sir, they did.

Mr. Rankin: You may cross-examine. I do not believe it is necessary to introduce these records. They are available if counsel cares to see them.

Mr. Bernard: May I have Exhibit 36?

#### Cross-Examination

By Mr. Bernard:

Q. Can you tell me, in round figures, the gross amount of business done by the Portland—I will call it the Portland branch office—in the thirteen months Mr. Brewer was here? [317]

A. Not without looking at the records. I believe it would run upward of \$35,000.

Q. Mr. Brewer stated it would run, in round figures, \$35,000. Do you think that is substantially correct? A. I think it is pretty close.

Q. You were here how often during those thirteen months? I will say, prior to July 1, 1947?

A. Well, I was here in May, in April and March, in January, December, November and October and again in May of 1946 and April of '46. I brought Mr. Brewer up here around the 1st of April, 1946.

Q. Mr. Brewer has testified nobody connected with the company ever made any complaint with the way he was handling the business. Did you ever make any complaint to him about the way the business was being conducted?

(Testimony of Harold W. Hilts.)

A. I did not complain to him. I tried to show him on various occasions how it could be operated more profitably.

Q. In what way?

A. It is not my policy to complain.

Q. What suggestions, generally, did you make to him?

A. Well, in the line of expenses and in the way of help and taking the men in and seeing that they got started correctly so that it is inexpensive.

Q. Did you think he had to have help or use help in the Oregon district? [318]

A. Yes, at various times he did.

Q. How many men do you think he should have had?

A. It would depend on the volume of business and that changed from month to month.

Q. What was the greatest number of help Mr. Brewer had at one time?

A. I really don't know, offhand.

Q. His territory took in all of Oregon?

A. That is correct.

Q. You said Mr. Brewer drew around \$4,500 during the year. How was that made up, Mr. Hilts?

A. Well, he drew over \$2,500 the last seven months of 1947; he drew \$1,000 the last six months of 1946.

Q. He drew what?

A. There may be a correction. I might have said the last part. I meant the first seven months

(Testimony of Harold W. Hilts.)

of 1947 he drew over \$2,500; the last six months of 1946 he drew over \$1,000, and that is shown on the record of drawings.

Then there was an additional amount of \$925 of unsupported expenses that we considered was a drawing.

Q. On Exhibit 36 it shows "Brewer drawing, \$2505.55." What period of time does that represent?

A. From January 1st, 1947, to June 30, 1947.

Q. That just covers the period of six months?

A. That is correct. No, I beg your pardon. I am wrong there. [319] It covers the period of from July 1st, 1946, to June 30th, 1947. I would like to have that exhibit to refresh my memory. I can't remember figures too well.

Q. This exhibit purports to cover a year instead of six months? A. That is correct.

Q. It says here "Plus Brewer drawing, \$2505.55." What does that figure represent?

A. That figure represents his drawings record on the books from July 1, 1946, to June 30, 1947.

Q. One year? A. That is correct.

Q. You say, then, he drew in July, 1947, how much? A. Over \$1,000.

Q. The only other item which you add to that is this \$925 which you say is unsupported by vouchers? A. That is right.

Q. Was he repaid the \$1,000 that he put in at the start? A. He was repaid in the \$4,500.



(Testimony of Harold W. Hilts.)

Q. Well, did he withdraw any \$1,000 in addition to this \$2,505.55 and \$1,000 in July?

A. I don't know.

Q. The point I am making is: If he was repaid the \$1,000, it has to be deducted from the amount of these drawings that you have shown here.

A. That is right. [320]

Q. If we deduct the \$1,000 from the amount he withdrew in July, the total amount Mr. Brewer drew during the life of the contract would be \$2,505.55, plus any balance over and above \$1,000 in July, 1947, and any portion of this \$925 which is properly charged against him?

A. Yes, and we only got \$994.

Q. What do you mean by that?

A. That is all we ever got out of it.

Q. Well, where did you get that?

A. That was the amount of the January and February, 1947, franchise, total \$994.25.

Q. How much money have you—When I say “you” I mean the Paramount Pest Control Service—collected on contracts since August 1, 1947; I mean contracts that existed prior to that time on work done by Mr. Brewer?

A. Less than \$1,500.

Q. Can you give us the exact figure?

A. No, I can't exactly. That is right around under \$1,500. I don't know exactly the figure.

Q. About \$1,500? A. That is right.

Q. There was paid to you how much, by Mr. Brewer? A. I didn't understand.

(Testimony of Harold W. Hilts.)

Q. There was paid how much by Mr. Brewer?  
You say \$900-odd? A. \$944.25. [321]

Q. So you have received \$994.25 plus about \$1,500?  
A. That is right.

Q. That is correct?

A. There was also another payment made on the settlement of \$259.61. I didn't take that into consideration when I answered you.

Q. Anyway, you have received, in addition to the amount set forth here that he was given credit for, you have received approximately \$1,500 in addition to that?

A. I don't get your question. I am sorry.

Q. There are certain payments that it is conceded in the pleading and by everybody that Mr. Brewer made. In addition to those, Paramount Pest Control Service has received about \$1,500 in collections since this trouble started?

A. In round figures, I think.

Q. On Exhibit 36— and any time you want this let me know and I will hand it up to you—

A. Yes.

Q. —is an item "Bills due Oakland as of date, \$533.65." There is a circle with a cross in it after that figure. Do you remember who put that in?

A. Yes. I put that in.

Q. For what purpose?

A. Those are bills that Mr. Brewer acknowledged that he owed Oakland. [322]

Q. I mean this mark.

A. That circled asterisk?

(Testimony of Harold W. Hilts.)

Q. Yes.

A. We have the same thing down below.

Q. What was the purpose of writing that in?

A. To tie it in to a number of invoices.

Q. Didn't Mr. Brewer tell you at the time he had some question about that amount?

A. No, not at all. He conceded it.

Q. He conceded this amount entirely?

A. Absolutely. He conceded the whole thing and made a payment on it.

Q. Exhibit 39 is an exhibit showing an account as of July, 1947. You have "Monthly control service, \$2,585.05." Is that the total amount of the charges for monthly service whether or not the collections had been made?

A. I don't know unless I can refer to the exhibit.

(Exhibit No. 39 shown to the witness.)

A. Now, your question again, please?

Q. (By Mr. Bernard): You have a total amount of business done, whatever the figure is, the first three items. What do they total up to?

A. \$2,645.55.

Q. Is that the total amount of business done or the total amount of money collected? [323]

A. That is the total amount of business on the books.

Q. In arriving at the amount due Paramount Pest Control Service, you have taken 20 per cent of that amount?

A. No.

(Testimony of Harold W. Hilts.)

Q. Less one or two credits?

A. Less allowances that were written off the books during the month of July of \$254.80. We claimed 20 per cent of the balance, \$2,390.75, which is \$478.15.

Regardless of whether or not the money had been actually collected?

A. That is correct. These are franchise routes.

Q. I know they are franchise routes, but if you will answer the question, please.

A. You bet I will.

Q. Maybe you will remember this exhibit. Exhibit 51 is the list of the expenditures not verified, totaling \$925.89. As I understand, you have charged those to Brewer in addition to the other drawings because you could not find any supporting vouchers, is that correct? A. Yes, sir.

Q. You, yourself, of course, have no way to know whether or not that money was spent as legitimate expenses in connection with the business or whether he spent it on himself?

A. The only way we can determine, if there is expense in the record for it, is that he made out expense accounts for other [324] items he has paid and charged it to expenses. If there was no supporting evidence, the only thing we can do is come to that conclusion.

Q. I didn't ask you that. I said you, yourself, have no personal knowledge as to where any of this money went, have you? A. No.

(Testimony of Harold W. Hilts.)

Q. Is that correct? A. No, it is not.

Q. What? A. I don't know.

Q. Now, I refer to Exhibit 53 in which you list the expenses of the business as \$3,596.95. What is your salary with the company?

A. I didn't understand.

Q. What is your salary with the company?

A. \$5,200 a year.

Q. On this exhibit you have "R. W. Hilts, Time, \$350." Was that in addition to your salary; or merely a proportion of the time with reference to the salary which is put in here?

A. It represents the time that I put in here.

Q. The company did not pay you any additional salary? The company did not pay you any additional salary, did they, by reason of your coming up to Portland?

A. Not in this particular case, no. [325]

Q. Who is Andy LePape?

A. One of our men.

Q. What is his salary?

A. I don't remember exactly. The computations are there.

Q. It says \$250 here.

A. That is what it is then.

Q. That is his salary with the company, at that time? A. Yes.

Q. Was he paid any additional salary by reason of coming up to Portland? A. No, sir.

Q. Carl Dolby. Who is Carl Dolby?

A. One of our men.



(Testimony of Harold W. Hilts.)

Q. It says here \$253.84. Was he paid any additional money by reason of coming to Portland?

A. No, sir.

Q. W. T. Moore, \$103.87. Who is W. T. Moore?

A. One of our men.

Q. Was he paid any additional compensation by reason of coming to Portland? A. No, sir.

Q. DeGrey Brooks, \$207.75. Was he paid a salary? A. Yes, sir.

Q. Was he paid any additional salary by reason of coming to Portland? [326]

A. No, sir.

Q. C. W. Fisher.

A. He was not with the company at the time. He went on the payroll immediately upon arriving.

Q. How long had it been since he had been with the company prior to August 1st?

A. A matter of a few months.

Q. How long did he work? A. A month.

Q. A month?

A. Yes, in and around the territory. He was not here in Portland a month. He was traveling around the country,—around the territory, rather.

Q. Who is Mr. Elfers?

A. Also one of our men.

Q. You have got him down here for \$220. Was he paid any additional salary by reason of coming to Portland?

A. No, sir. We had to pay other expenses, though, to cover all of these men.

(Testimony of Harold W. Hilts.)

Q. Exhibit 54 in an exhibit which is headed "Canceled accounts with time to run as per contract."

What did you do in making up this exhibit, put in all the contracts that had been canceled since August 1st?

A. Only those contracts that were canceled because of Brewer's action. [327]

Q. How did you determine they were canceled because of Mr. Brewer's action?

A. There is an exhibit attached to that, the contract itself, plus, I believe, supporting detail as to the customers and, in some cases, the reasons, where they were contacted personally by the men and they brought that information back with them in submitting the canceled accounts by the medium of the cancellation slip which is attached, I believe, for both of these exhibits.

Q. How did you determine, in making up this exhibit, that Mr. Brewer was responsible for canceling any particular contract?

A. Any accounts that were canceled at the time, right after the beginning of August 1st, 1947, were put aside specifically for that purpose, and we scheduled them and we knew what they were.

Q. Under this heading "List of accounts that were on books longer than a year and canceled only because of Brewer action," on Exhibit 55, that, as we understand it, is the total amount that the customers would have been called upon to pay if the contracts had run their time, is that correct?

A. That is correct.

(Testimony of Harold W. Hilts.)

Q. And then you said you figured you were entitled to 40 per cent of that?

A. That is correct. [328]

Q. If all that money had been collected by Mr. Brewer after July 1st and the work done by him, how much would Paramount Pest Control Service have received on it?

A. If it had been collected by Mr. Brewer?

Q. No. You have here that there would have been collected, if the contracts had run their course, \$4,596.75. If Mr. Brewer had succeeded in performing these contracts under his license, how much would Paramount Pest Control Service have received?

A. We would have received, under the agreement, 20 per cent should the agreement cease to exist. Therefore, we would have received 40 per cent.

Q. In other words, you are claiming twice as much as you would have received if he had gone on under his license?

A. That is correct, but he did not go on.

Q. As I understand it, you also said you figured you were entitled to \$1,500 a month damages. That would be \$18,000 a year. How do you figure that?

A. I didn't say that.

Q. Tell me what you did say.

A. I said we figured our damages amounted to \$1,500.00 a month, and that we could retain under the terms of the contract, on an experience rating,

(Testimony of Harold W. Hilts.)

60 per cent of all customers that are on our records and, therefore, our damage is about 60 per cent over the term expiration of the contract.

Q. 60 per cent of what? [329]

A. 60 per cent of \$1,500 per month for nine years, for eight years and eleven months.

Mr. Bernard: I think that is all.

Redirect Examination

By Mr. Rankin:

Q. Counsel asked you about \$1,500 that you received as payment on the contracts after August 1st?

A. Yes, sir.

Q. Did you have to service those contracts?

A. Yes, sir.

Q. Exhibit 54 contains a list of contracts canceled. Counsel asked you why you attributed those to Brewer. State whether or not you compared those canceled contracts with the answer that Mr. Brewer filed in regard to the interrogatories?

A. Yes, sir, I did.

Q. And did Mr. Brewer confirm those cancellations by saying that he had taken over the contracts?

A. Yes, sir.

Q. Counsel also inquired of you whether or not these men were paid a regular salary or were paid anything additional. Would any of those men have been doing the work of saving the company's business in Oregon had Mr. Brewer not left the company and canceled the contracts and then continued his service?

(Testimony of Harold W. Hilts.)

A. No, sir. We would have received revenue from their operations elsewhere in our organization.

Q. Did you give Mr. Brewer an opportunity to explain the vouchers in that item of the exhibit that has to do with the unsupported charges or withdrawals? A. No, not at that time.

Mr. Rankin: All right. Thank you.

#### Recross-Examination

By Mr. Bernard:

Q. Maybe in one of my questions I did not make myself clear. When Mr. Brewer left on August 1, 1947, there were some amounts owing for work which had already been done by him? I mean, on the books? A. Yes, sir.

Q. How much of that has been collected by Brewer's Pest Control?

A. By Brewer's Pest Control?

Q. By the Paramount Pest Control Service, yourselves? A. Around \$1,500.

Mr. Bernard: That is all.

#### Redirect Examination

By Mr. Rankin:

Q. Did you service the contracts from which you received that money?

A. We serviced them afterwards, but not before.

Mr. Rankin: All right; that is all.

(Witness excused.) [331]



GLENN H. FISHER

was thereupon produced as a witness on behalf of plaintiff and, being first duly sworn, was examined and testified as follows:

Mr. Rankin: If the Court please, at the time I offered this one deposition of Mr. Flanagan, I anticipated using others along the same line, or I would not have offered the one little deposition. To expedite this case, I think we can dispense with these others, so I place no particular stress upon that one little deposition.

Direct Examination

By Mr. Rankin:

Q. You are a little hard of hearing, aren't you, Mr. Fisher?           A. Slightly.

Q. Give your name to the Court.

A. Glenn Harold Fisher.

Q. Where do you live?

A. 6600 Dawes Street, Oakland, California.

Q. About how long have you lived there?

A. About two and one-half years.

Q. What is your occupation?

A. Pest control.

Q. How long have you been in the pest control business?           A. Since 1935.

Q. Are you the Glenn Fisher mentioned as one of the partners in the original Paramount Pest Control Service with Mr. Sibert? [332]

A. I am, sir.

(Testimony of Glenn H. Fisher.)

Q. When did you first meet Mr. Brewer?

A. In the early part—I would say in the first week of January, 1946.

Q. What was the occasion of your meeting him?

A. He was in Mr. Sibert's office, talking to him, I think at that time, in regards to being employed by us.

Q. Do you segregate any departments in your corporation for any one individual to supervise?

A. Yes, we do.

Q. Have you a particular department that you give your attention to?

A. Yes. My real function in the organization is contacting our personnel, our managers, throughout the territory.

Q. Did you have anything to do with Mr. Brewer in that regard?

A. No, I didn't.

Q. Did you have, at any later date, any occasion to confer or discuss any phases of the business with Mr. Brewer?

A. What do you mean by a later date?

Q. After this January meeting when you first met him for the first time?

A. Yes. In February, I think it was the forepart of February, that same year.

Q. What was the occasion and what did you do?

A. I was having a conversation or conference with Mr. Sibert [333] and we had decided something would have to be done with the Portland territory, and we discussed at great length the possi-

(Testimony of Glenn H. Fisher.)

bilities and what we should do about it, and about that time we decided that Mr. Brewer, whom I had met about a month previous, would be the man. We were preparing to call him and we got a buzz from the front office that he was out in the front office waiting. It was entirely a coincidence.

Q. Did you discuss the matter with him?

A. I did.

Q. Just tell what transpired.

A. We called him back and talked to him about the territory, and he had previously expressed his desire, if he came to work for us, to come to this general territory, and he wanted to know something of these agreements that we had with our employees, so we told him there were two, a managership agreement and also a franchise agreement, and, in order to better explain them to him, I got a copy of each from our files and we sat down right across the table and we took those paragraphs more or less paragraph by paragraph and, if he had questions to ask, I tried my best to explain it to him.

Q. When was this, please?

A. This was in February, the forepart of February.

Q. What year?                   A. 1946.

Q. Did you at that time explain to him the franchise agreement, [334] a franchise agreement in the same form as that which he signed on July 1st with you?

(Testimony of Glenn H. Fisher.)

A. Yes. With the exception of the name of the agent, the territory and date, I would say they were verbatim.

Q. Did he come up immediately on that franchise?      A. No, he didn't.

Q. What did he come on?

A. Well, he came on our promise of a managership agreement.

Q. Did he sign a managership agreement?

A. Not at that time.

Q. Did he later sign one?      A. Yes, he did.

Q. When?

A. In Portland, Oregon, after I came up some two or three days later.

Q. At the time he came to Portland, had you gone over both contracts with him?

A. Definitely.

Q. Did he take them to any lawyer or any place that you know of?

A. No, I don't know as he did. I oftentimes suggest that they might, but I don't know as I did this time. Possibly could have.

Q. Did he take that away with him?

A. Yes. [335]

Q. Take them away, I should say.

A. Yes.

Q. What did he do with them, if you know?

A. He took them home. I told him, "Take these home and study them. There may be something else come up, because this is a very important business

(Testimony of Glenn H. Fisher.)

for us and we feel it should be an important venture for you, and it is very essential that we have a perfect understanding.”

Q. When he returned them, did he make any further inquiry about them?

A. No, I don't believe he did.

Q. Did he ask you anything about them then?

A. No, he never asked me.

Q. Where did he sign the manager's contract that you mentioned?

A. In Portland, Oregon, after I came up.

Q. About what time?

A. That would be about March 4th or 5th, right shortly after the first of March.

Q. How did you handle the execution of this franchise, July 1, 1946?

A. I beg your pardon?

Q. It bears your signature and Mr. Brewer's signature. Would you tell the Court how that was handled in its execution?

A. Well, I had talked to Mr. Brewer at the time of his coming [336] north. He didn't wish to come north without a contract and he wanted a franchise contract, but I explained to him that possibly for a month or two or three he would be better off from a financial standpoint to go on a managership agreement, and he said he could get along on \$250 a month, and that was the agreement he went on, and if the business prospered and was handled correctly he would naturally, under that agreement, be able



(Testimony of Glenn H. Fisher.)

to earn more than \$250 a month, so I had more or less set the 1st of July, which was about three months from then, as a good time for him to go under our regular franchise agreement, due to the fact that we were in the process of incorporating our business, making us a corporation rather than a partnership, and at that time we could go into our regular franchise agreement with him as a corporation, and it was very agreeable to him.

Q. Where did you sign that franchise of July 1st, 1946?      A. In our Oakland office.

Q. Had Mr. Sibert signed it then?

A. No, he hadn't.

Q. I don't mean Mr. Sibert. I mean Mr. Brewer. Had Mr. Brewer signed it then?

A. No, he hadn't.

Q. What did you do about getting his signature?

A. I sent him two copies in the mail—I signed two copies and put them in the mail and sent them to Oregon to Mr. Brewer [337] in Oregon for his signature.

Q. When did you do that?

A. That would be in July, the forepart of July or, rather, possibly the latter part of June, somewhere along in there.

Q. How long was it before you got them back?

A. Oh, I would say a week, approximately the time that it would take the mail to come up and be returned.

Q. Did you get them both back or one?

A. One, my copy.

(Testimony of Glenn H. Fisher.)

Q. When you received it back, was Mr. Brewer's signature on it?      A. Yes, it was.

Q. When did you again see Mr. Brewer?

A. From what date, sir?

Q. Any time after July 1, 1946, any time after July 1st?

A. July 1st, 1946. I was just trying to think, Mr. Rankin.

Q. Let me get at it this way: When did you again come to Portland, Oregon, after July 1st, 1946?

A. I believe it was in August I came through here on my vacation and just merely stopped off as I was going through.

Q. When did you again come on any business trip?

A. Never came on another business trip until after the breach of this agreement.

Q. Did you see Mr. Brewer in Oakland in November, 1946?      A. Yes, sir. [338]

Q. Where did you see him?

A. In Mr. Sibert's home.

Q. Mr. Brewer claims he came there with his wife in protest against your treatment of him in the Oregon territory. Did you have any conversation with him about the business in Oregon?

A. Not other than "How are things going?" And he seemed to be very well satisfied. He had an expression which he used at that time. He said, "It is the best in the West." That is the way he was explaining to me how he felt things were going in Oregon.

(Testimony of Glenn H. Fisher.)

Q. I believe the testimony shows that you were here in June, 1947. No, I beg your pardon. I believe the evidence shows that were again in Mr. Sibert's home in June, 1947? A. That is true.

Q. Did you see Brewer then?

A. Yes, I saw Mr. Brewer at that time.

Q. Did you discuss the Oregon business with him then?

A. Well, it was almost identical. I travel a great deal and, as I remember, on that trip I was just returning from Los Angeles. I heard Mr. Brewer was in town so I dropped in to visit a while on my way home.

Q. From the time you met Mr. Brewer until this June meeting in 1947 in Mr. Sibert's home, had he ever told you or anyone connected with the company in your hearing that he was going [339] to drop this business, this franchise?

A. No, sir. When that happened, we were all very much dumbfounded. We could hardly believe it.

Q. Was there anything in any of his conduct at any time that gave you any warning that he was terminating his agreement?

A. Not in my presence, no, sir.

Mr. Rankin: You may cross-examine.

#### Cross-Examination

By Mr. Bernard:

Q. At the start of your examination you said it had been decided something had to be done with the Portland office. Is that correct? A. Yes.

(Testimony of Glenn H. Fisher.)

Q. Whom did you discuss that matter with?

A. Mr. Sibert, Mr. Hilts, I believe, and—At least Mr. Sibert and myself.

Q. What was the reason that something had to be done with the Portland office?

A. Well, it just so happens that the former employee is in the courtroom today, so I will *be speak* very frankly. We felt that the business was not being *taken of* adequately; there were complaints, particularly from our largest customer, the Southern Pacific Company, and when I came up here this former employee said, "Mr. Fisher, I don't blame you. I expected it several months ago."

Q. In other words, conditions in the Portland office were not satisfactory?

A. As far as service was concerned.

Q. When you saw Mr. Brewer, you discussed both forms of contracts with him?

A. That is true.

Q. The manager's contract and the franchise form of contract?      A. That is true.

Q. Was it in California that you claim to have turned over copies of them to him?

A. That is right. It was in Oakland.

Q. You say that he took those away from the office?      A. That is true.

Q. How long did you say he had them?

A. I would say two or three days. It seems to me—I wouldn't be positive, but it seems to me like this was along the latter part of the week and he

(Testimony of Glenn H. Fisher.)

was to come to work Monday morning. I believe he took them home with him over the week end and familiarized himself with them.

Q. That was before he had done any work in pest control?           A. That is true.

Q. You knew that he was totally ignorant of the pest control business?

A. That is right, other than what conversations we had had prior to giving him the contract and talking contract, as we [341] always do to a man that has no understanding of any of this business; we would explain the thing, the nature and type of our work, and tell him about the dirty part of it as well as the good part of it, so he can make up his mind as to whether he considers himself the type of a person that would adapt himself to this business.

Q. Did he want to sign a contract before leaving Oakland?           A. For Portland?

Q. Yes.

A. He desired to sign a contract. He didn't—He said he didn't want to go anywhere without having a contract and at that time he wanted the franchise contract.

Q. Why didn't you have him sign a contract before he left Oakland?

A. Because at that time our former manager had not been notified of our decision to replace him, and I felt that that would be getting the cart before the horse to have one man have a contract in a district where another man already had a contract.



(Testimony of Glenn H. Fisher.)

Q. So he came up here with no written contract at all?

A. That is true, but with the promise of one.

Q. After he got here he signed what was known as the manager's contract? A. That is true.

Q. What compensation was he to get under that manager's contract? [342]

A. Under the manager's contract he received \$250 a month guarantee with 20 per cent of the net profit, over \$600, monthly base.

Q. Over \$600 monthly, net monthly base?

A. That is right. He got \$250 out of the first \$600, and run the business, paid the expenses on the first \$600 of business. If there is anything left out of the first \$600, he got it. Further than that, he got 20 per cent of the net profits.

Q. Was this \$250 paid out of that \$600?

A. That is correct. That was included.

Q. So, under that form of contract, he would get \$250 a month guarantee or \$3,000 a year and then anything over \$600 net profit?

A. No, sir.

Q. What? A. No, sir, I didn't say that.

Q. All right. You tell me.

A. He got his 20 per cent of the profit, net profit, of all business done over \$600.

Q. How long did this manager's contract have to run by its terms?

A. By its terms it could be canceled within thirty days by either party.

(Testimony of Glenn H. Fisher.)

Q. Subject to a 30-day cancellation? [343]

A. That is true. He was put on that basis just for the first two or three months, according to my more or less understanding with him.

Q. What do you mean your "more or less understanding with him"?

A. All right. He asked me about the franchise when he came up here, and that is when I told him that he should not go on the franchise; that he would make more money and would be better off to go on a managership franchise or a managership agreement, and I felt that if he would go in and do his work and finish all the work which was laid out here that he would then be in a very fine position to go on the franchise agreement on July 1st.

Q. Where did you discuss the matter with him after he came to Portland?

A. You mean on the first trip here?

Q. Yes.

A. In the hotel room, I believe it was, or at Mr. Taylor's home where our office was at that time. I would not be sure.

Q. I mean with reference to this franchise contract.

A. I didn't discuss it at that time. We had made our discussion on that score before he left Oakland. I merely had the contract with me and he seemed to be very familiar with it. He didn't hesitate to sign it. He said, "Where is your pen?"

Q. Did you bring it to Portland? [344]

A. I brought the contract to Portland with me.

(Testimony of Glem H. Fisher.)

Q. For his signature?

A. For his signature.

Q. For what other reason did you come to Portland?

A. To terminate our agreement with Mr. Taylor, our former manager.

Q. When did you terminate your agreement with Mr. Taylor?

A. Let's see. I imagine—I think it was the 4th or 5th of April, the first week of April.

Q. That is when you had Mr. Brewer sign the manager's agreement?      A. That is true.

Q. What did you do towards having it changed over to a franchise agreement as of July 1st?

A. I had nothing to do with it other than our discussion with Mr. Sibert in that regard in our Oakland office.

Q. Mr. Sibert was the man who told you to prepare the franchise agreement?

A. No, he didn't tell me to prepare that agreement at all.

Q. You had nothing to do with Mr. Brewer signing that franchise agreement?

A. No, sir, other than sending it up there after the boundary or territory part of it had been filled in.

Q. When you sent it up, was it signed?

A. When I sent the two copies to Mr. Brewer?

Q. Yes.

A. Yes, I signed the two of them.

(Testimony of Glenn H. Fisher.)

Q. You signed the two of them and sent them up?  
A. Yes.

Q. You were not, of course, present when he signed it?  
A. No.

Q. Who delivered it to Mr. Brewer for signature?  
A. I mailed it to him.

Q. For signature?  
A. That is true.

Q. Do you know if anybody discussed it with him prior to July 1st?

A. Prior to July 1st? Yes, I think Mr. Sibert had. I don't know. He probably did.

Q. Isn't it a fact Mr. Sibert made the contract up in Portland here?

A. With the exception of the boundaries, and for that reason Mr. Sibert would not sign a contract here without first consulting me on the boundary situation. Mr. Brewer, as I recall the conversation with Mr. Sibert, had requested a portion of the State of Washington to be included into the franchise because of the proximity, particularly of Vancouver across the river, and we would not write that in the franchise. Mr. Brewer, if I am not mistaken, was left a copy of this exact franchise as it was typed here under Mr. Sibert's orders, and two of them [346] were brought to Oakland, that is, the two that were used to fill in the boundary, to have the boundaries of the territory put in, and that was typed in Oakland and I signed them, inasmuch as I had more or less promised or intimated to Mr. Brewer that his franchise would start July 1st, and mailed them to him.

(Testimony of Glenn H. Fisher.)

Q. When was this concern incorporated?

A. July 1st, 1946.

Mr. Bernard: That is all.

Mr. Rankin: That is all.

(Witness excused.)

Mr. Rankin: That is our case in chief, if your Honor please.

Plaintiff rests.

### STIPULATION

Mr. Bernard: If your Honor please, before I proceed with the testimony, Mr. Smith has kindly agreed to stipulate with me that the original complaint filed in the Circuit Court of the State of Oregon for the County of Multnomah, Paramount Pest Control Service, a corporation, vs. Charles P. Brewer, Raymond Rightmire, Carl Duncan, Earl Merriott and Rosalie Brewer, which, as we have said, involves the same matters involved here and which was verified by Mr. T. C. Sibert, contains the following allegations with reference to this franchise contract:

“That notwithstanding the written provision 27 of said agreement, the parties did not, and do not intend that the laws of the State of California shall govern any or all questions that may arise concerning the validity, construction or interpretation of this agreement, nor did they intend that any civil action which might be filed had to be filed in the State of California.”

Mr. Smith: That is correct, your Honor.



## Defendants' Testimony

## RAYMOND RIGHTMIRE

one of the defendants herein, being first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Bernard:

Q. Mr. Rightmire, where do you live?

A. In Portland, Oregon.

Q. How long have you lived here?

A. Since August, 1946.

Q. Where did you live prior to coming here in August, 1946?

A. I lived in Vancouver, Washington, two years.

Q. When did you first go into the pest control business?      A. It was in May, 1946.

Q. May, 1946?      A. Yes. [348]

Q. And where was that?

A. It was in Portland, for the Paramount Pest Control Service.

Q. Was it at that time that you signed this statement about not—Wait until I find it—this statement appearing on page 8 of the complaint starting out "Because I do have a limited knowledge of the exterminating, pest control, or termite business, and do not know any formulas, processes, methods, or other trade secrets thereof, I agree," and so forth? Was it at that time that you signed that statement?      A. Yes, near that time.

Q. About in May?      A. Yes.

(Testimony of Raymond Rightmire.)

Q. Did you at that time have any knowledge of the exterminating business or pest control business?

A. Very little.

Q. Who hired you?

A. Mr. Sibert of the Paramount Pest Control Service and Mr. Brewer.

Q. After you were hired, what did you do?

A. Oh, I immediately began traveling around with Mr. Duncan for about three days.

Q. What information did Mr. Duncan give you?

A. Well, he showed me how to cut up carrots and apples and things like that and put them in a one-gallon can and stir it up and put a little chemical on it or poison, and we ran [349] around these buildings, around the baseboards, and dropped little pieces here and there; and he showed me a little bit about roaches, how to exterminate them, or about how it was done.

Q. What did he show you about exterminating roaches?

A. He had a little bit of a puffer that laid in the palm of his hand, with a little powder in it, and he went around the cracks where roaches might be, showed me where they might be in there—that was the principal thing that Mr. Duncan showed me.

Q. You say you worked with him for about three days?

A. That is right.

Q. At any time were any formulas, processes or methods or trade secrets given to you?

A. No, not that I know of.

(Testimony of Raymond Rightmire.)

Q. After these days what did you do, Mr. Rightmire?      A. I went to work by myself.

Q. Did you continue to work by yourself from that time on?      A. Yes.

Q. Just tell the Court how you would work. In other words, would you be given the names of persons to go and call on, or what?

A. There was a list of customers around there in the office in the Kardex form, and principally those at first was trouble calls, continuous trouble calls. The phone was ringing whenever [350] I was in the office, and when I was out I called in to the office and it was always troubles. Two-thirds of my time, after the first days, were spent on troubles.

Q. Then, after that period, how did you work?

A. Well, after that period of time, the salesman that was with the organization at that time was contacting people, and I was working behind him. I did have to learn about exterminating these pests myself. Something that no one seemed to be able to show me in the Paramount organization was how to exterminate them. They were servicing these customers, and they didn't show me how to get rid of them.

Q. You say you learned that yourself?

A. Yes.

Q. How long did you continue to work for them, Mr. Rightmire?

A. Beginning or near the first of July I was told by Mr. Hilts and I was told by Mr. Brewer

(Testimony of Raymond Rightmire.)

that I was no longer at that time working for Paramount Pest Control Service, a partnership; that I was working for Charles P. Brewer, and I felt, due to the fact of this little slip that I signed, that I was no longer obligated to them, since I was not working for them, for that partnership.

Q. Mr. Hilts told you that?

A. Mr. Hilts and Mr. Brewer.

Q. After July 1st, how did you continue?

A. Well, we were continually making an effort and endeavoring [351] to exterminate pests in order to hold these accounts, and we did settle this cancellation business within three months or four. I recall in that time very long hours of hard work and uncertainty, because I didn't know all about it.

It was during that time, it seems to me, about three months after that Mr. Sibert came—I believe he flew up here—and as I came to work that morning Mr. Brewer drove up with his car, with Mr. Sibert in the car, as I was walking up Park Avenue to our office.

Mr. Sibert stepped out of his car in the presence of Mr. Brewer and myself and he said, "Ray, you fellows have done a wonderful job here," and he said, "You have brought this thing out of the red for the first time, the first time that the Portland territory was ever out of the red."

I thanked him and told him that I thought we had done all right, due to the fact that our knowledge was limited and that our education had been

(Testimony of Raymond Rightmire.)

slightly neglected along those lines, and he turned to Mr. Brewer and said, "Charlie, remind me to send this boy a course in chemistry right away," but I never got that course in chemistry.

Q. Can you figure about what month that was, Mr. Rightmire?

A. It must have been in July, June or July. Dates didn't mean much to me. I don't keep a diary.

Q. Did you go on vacation in July?

A. That was in 1946, that other statement. Yes, I did. [352]

Q. How long did you continue that work, through 1946 and 1947?

A. I am going to make a correction here.

Q. Yes.

A. I didn't go on vacation in July, 1946.

Q. What work did you continue to do throughout 1946, say, for the first half of 1946?

A. It was mostly in extermination of rats, mice and roaches. There was an occasional ant job. I think during my employment by Paramount that there was not over eight or ten jobs of ant control or ant extermination.

Q. How would you do those jobs?

A. Well, we had some ant cups, they call them, and we put those around, but they didn't do any good. In fact, it looked to me as if the ants was getting fat on them, so we tried other things, and eventually that roach powder and everything else



(Testimony of Raymond Rightmire.)

that satisfied the customer, but to this date I am not a good ant exterminator.

Q. Did you go on vacation in July, 1947?

A. Yes.

Q. When did you go?

A. Went to Camp Sherman.

Q. When?

A. It was the very last part of July.

Q. You went to Camp Sherman? [353]

A. Yes.

Q. How long were you down there?

A. I think we were up there three or four months.

Q. Prior to your leaving, Mr. Rightmire, did you know that Mr. Brewer had severed or intended to sever his connection with Paramount Pest Control Service?      A. I did not.

Q. When did you first receive any information that Mr. Brewer had severed or intended to sever his connection with Paramount Pest Control Service?

A. When I asked Mr. Brewer for this vacation, which was much overdue, he told me he would let me have the vacation, that he thought it was earned, that I was entitled to it, and then he didn't know at that time whether he would still be manager of Paramount when I returned.

Q. Did he make any further statement about that?      A. Not that I remember of.

Q. You returned when?

A. Three or four days later: the exact dates I don't recall.

(Testimony of Raymond Rightmire.)

Q. Do you remember being over at Mr. and Mrs. Brewer's house about July 30th when Wendy Fisher came over there?

A. I went over there and returned Mr. Brewer's fishing equipment. I had borrowed it to go fishing on my vacation. I was visiting with Mrs. Brewer, as Mr. Fisher said.

Q. Had you been informed then Mr. Brewer was severing his [354] connection with the company?

A. I had not been completely informed then.

Q. You had not been completely informed? What information did you have?

A. I knew by his statement before I went that he was going to break with them, but I hadn't got to talk to Charlie myself right at that time.

Q. That was about the time you went on your vacation?

A. About the time I went on my vacation, yes.

Q. What was the conversation, as you recall it, over in the Brewer home on July 30th when you returned this fishing equipment to Mr. Brewer here?

A. Mr. Fisher was in there. I and Mrs. Brewer was visiting there, and he came in and, I don't know—we were all in a very jolly mood. I was happy over having a vacation. I didn't make any statement; neither was there a statement made there concerning the fact that I had my vacation pay and if I hadn't got it I never would have got it. That statement was never made, nor there was no statement made there of that kind that I recall at all.

(Testimony of Raymond Rightmire.)

Q. What is your recollection of the conversation with Mr. Fisher?

A. I don't remember much of it. It was very short. I returned Charlie's equipment. I really don't recall right off.

Q. When did you receive any definite information that Mr. Brewer had resigned or had severed his connection, we will say, with [355] Paramount Pest Control Service?

A. After we left the house—I left the house and Mr. Brewer followed me to his car and told me that he was done with Paramount.

Q. That was on July 30th?

A. I think so, yes.

Q. Did you see Mr. Hilts within a day or two of that time?

A. Yes, Mr. Hilts called at my home.

Q. Do you remember what date?

A. I think it was the 31st. I am not sure of that.

Q. What was the conversation between you and Mr. Hilts at that time?

A. Mr. Hilts came to my home. It was a nice day and we sat out on the steps. He told me he regretted that I had been sick and called mainly for that purpose, that I had been sick and he was there to console me.

I remember very distinctly that I told Mr. Hilts right there that I would not believe, under any consideration, anything that Mr. Sibert would have to say to me, although I assure you there was no profanity used in our conversation.

(Testimony of Raymond Rightmire.)

Q. What else did you talk about?

A. Well, that immediately led to a conversation of Mr. Merriott.

Q. What was that?

A. Mr. Merriott, an employee.

Q. What was said about Mr. Merriott? [356]

A. He asked me if Mr. Merriott was a good exterminator. I told him he was a good exterminator. He said, "We might want to use him for a while."

Q. Anything further said that you recall?

A. He soon drifted to the subject of personal affairs and we sat down and visited cordially of what we had done in the past.

Q. When did you go to work for Brewer's Pest Control?

A. Shortly after the 1st of August, 1947.

Q. Tell the Court how you happened to go to work for Brewer's Pest Control? Who approached you?

A. Mr. Brewer approached me on that.

Q. What did he have to say?

A. He asked me if I would care to work for him in the pest control business. Knowing Mr. Brewer, knowing he had dealt fair with me and everybody else that I ever saw him deal with, knowing he was honest and had given me a fair deal, and not then having a job or any way to make a living for my family, I accepted the offer.

Q. By the way, how do you mean work? What sort of an arrangement did you have as to compensation?

A. He pays us each week.

(Testimony of Raymond Rightmire.)

Q. Is that the way you were paid prior to the organization of Brewer's Pest Control?

A. Yes, we were paid weekly.

Q. You were getting a weekly wage? [357]

A. That is right.

Q. Mr. Rightmire, did you have any understanding, directly or indirectly, with Mr. Brewer, or with any other person, that you would quit the Paramount Pest Control Service and attempt to take over their business? A. No.

Q. Was that matter discussed between you and Mr. Brewer at all?

A. It was not discussed at all.

Q. But did you discuss it with any other person?

A. No other person.

Q. Is your only interest in this thing as a wage earner?

A. That is right. I am just a working man.

Q. What kind of work have you done for Brewer's Pest Control?

A. Exterminating work.

Q. Did you have any list of the customers of Paramount Pest Control Service?

A. I did not.

Q. Have you done work for persons who were former customers of theirs? A. Yes, sir.

Q. Have you secured other accounts as well?

A. Yes, sir.

Q. What part of the state do you work in?

A. Well, I was—I did work for Mr. Brewer in the Eastern [358] Oregon territory last but since



(Testimony of Raymond Rightmire.)

the 1st of November, I believe, I have worked more in the west and southern parts of the state.

Q. Have you done work for Brewer's Pest Control for the Sugar Bowl in The Dalles?

A. Not for Brewer's Pest Control, no.

Q. Or for the Peasley Transfer or Transportation Company in Boise, Idaho?

A. I have not.

Q. Or for The Dalles Hotel?

A. I have not for The Dalles Hotel. Explanation there—The Dalles Coffee Shop which has an owner by itself, I worked for them.

Q. You have worked for the coffee shop in The Dalles Hotel?      A. Yes.

Q. There is some evidence here that somebody told somebody else that somebody representing Brewer's Pest Control had told them that Paramount was dissolving, that Brewer was really a change of name from the Paramount Pest Control Service. Did you ever make any statement anywhere like that to anybody connected with The Dalles Hotel or The Dalles Coffee Shop?

A. Absolutely not.

Q. Did you make any statement of that kind to any person at any time?      A. No.

Q. Have you at any time in your work for Brewer's Pest Control [359] made any statement at all regarding the Paramount Pest Control Service?

A. I have not.

(Testimony of Raymond Rightmire.)

Q. Are you now in possession of any formulas, trade secrets or processes of any kind furnished to you by Paramount Pest Control Service?

A. No, I have none in my possession at all.

Q. Did they ever furnish you with any?

A. No.

Mr. Bernard: You may cross-examine.

### Cross-Examination

By Mr. Rankin:

Q. Mr. Rightmire, you said the matter of your instruction when you first went to work for Paramount Pest Control Service was very meager?

A. Very simple, yes.

Q. In other words, it was very poor instruction?

A. No, sir; it was just of very short duration.

Q. What was the character of that instruction that you did receive?

A. As far as the instruction I had, it was good.

Q. When did you go to work for them?

A. In May, 1946.

Q. As I gathered the import of your testimony a moment ago it was that you had not had very much instruction, that they [360] just showed you a few places where you might put down something that some pest or rodent might eat?

A. Yes, that was in the instructions.

Q. Will you tell the Court whether the instruction you received when you began in May, 1946, was good or bad?

A. What instruction I had was good.

(Testimony of Raymond Rightmire.)

Q. Who was in charge at that time?

A. The instructor, you mean?

Q. Yes. A. Mr. Duncan.

Q. Mr. Duncan? A. Yes.

Q. And he is now associated with you in the Brewer's Pest Control, is he not?

A. He is an employee of Mr. Brewer.

Q. You are associated with him in that same business, are you not?

A. I am an employee of Mr. Brewer.

Q. Will you answer the question?

(Question read.)

A. Yes.

Q. You were also a defendant in the case that was brought by Paramount Pest Control Service in August of 1947, were you not? A. Yes.

Q. And you were served with a copy of the complaint in that [361] case? A. Yes.

Q. And that charged you, did it not, with violating your agreement that you would not go into the business for a period of three years after your employment ceased? A. Yes.

Q. And you went right in business with Mr. Brewer even after you had been served with that complaint, did you not?

A. I am an employee of Mr. Brewer's.

Q. Answer the question, please.

A. I am not in business with Mr. Brewer.

Q. You went on in the pest control business, irrespective of the fact that you were served with a copy of the complaint, didn't you? A. Yes.

(Testimony of Raymond Rightmire.)

Q. You knew at the time you were going in the pest control business that you were serving the same accounts in behalf of Mr. Brewer that you had previously served in behalf of Paramount Pest Control Service?      A. Some of them.

Q. Some of them?      A. Yes.

Q. What percentage?      A. I wouldn't know.

Q. You have a very good idea, haven't you?

A. I am not a bookkeeper.

Q. I didn't ask you that. I said you had a pretty good idea?

A. I have no idea of the percentage.

Q. Many or very few?

A. I don't understand that question exactly.

Q. Well, let's go back to the beginning. You served customers who wanted their services, services of the Paramount Pest Control Service, in connection with pests, did you not?

A. For Paramount?

Q. Yes, Paramount Pest Control Service?

A. Yes.

Q. You knew that they were under contract with Paramount Pest Control Service, did you not?

A. Yes.

Q. And you made reports upon this service to the Paramount Pest Control Service?

A. Yes.

Q. Whenever you serviced an account, you wrote out a slip saying that you had serviced it on such and such a date, for such and such a pest, did you not?      A. Yes.

(Testimony of Raymond Rightmire.)

Q. After August 1st you did the same thing for Mr. Brewer, didn't you?      A. Yes. [363]

Q. When you found that you, in working for Mr. Brewer, were servicing some, at least, of the same accounts that you had serviced for Paramount Pest Control Service, did you inquire of Mr. Brewer what his purpose was?

A. I don't quite understand that question.

Q. When you found that you were serving the same accounts for Mr. Brewer that you had served for Paramount Pest Control Service, did you inquire why you were doing so, from Mr. Brewer?

A. No.

Q. Did you have any discussion with him as to how he could serve Paramount's accounts that had been under contract when he was no longer connected with Paramount?

A. I didn't discuss that with him.

Q. Why not?      A. I had no reason to.

Q. Well, weren't you curious to know?

A. Not at all.

Q. How did you get the names of Paramount customers?

A. I solicited all potential customers.

Q. That is not my question.

A. And that is how I got the names of Paramount customers.

Q. You knew they were Paramount customers before you even went there?

A. There was no list.



(Testimony of Raymond Rightmire.)

Q. Answer the question. You knew they were Paramount customers [364] before you went there, didn't you?      A. Why, sure.

Q. You had served them, hadn't you?

A. Certainly.

Q. Did you have any list of Paramount customers, as such?      A. No.

Q. You remembered them, didn't you?

A. Yes.

Q. If you served Albers Brothers, you would know if you had served Albers Brothers before August 1st?      A. Certainly.

Q. If you served them afterwards you knew that you were serving them for a different person than Paramount Pest Control Service?

A. Certainly.

Q. Now, you spoke particularly of July. Did any of these customers of Paramount, after Mr. Brewer told them he was no longer associated with Paramount, and you went in representing Brewer, did they ask you what the trouble was?

A. Yes.

Q. Did you tell them what the trouble was?

A. Surely.

Q. Did you tell them what Mr. Brewer had told you?      A. What was that?

Q. I say, did you tell them what Mr. Brewer had told you? [365]      A. I told them——

Q. Just answer my question. Did you tell them what Mr. Brewer had told you?

A. I don't know what you are contending Mr. Brewer told me.

(Testimony of Raymond Rightmire.)

Q. Did Mr. Brewer tell you anything?

A. Yes.

Q. What did he tell you?

A. He told me he was in business for himself.

Q. Did you make no inquiry about his contract or his franchise?

A. I didn't have any reason to.

Q. That is not answering my question. Did you?

A. I didn't make any inquiry.

Q. You did not?           A. No.

Q. You were willing to just accept the situation, and go on, without finding out how Mr. Brewer had any right to go on with this pest control business, when you were advised by the complaint that was filed that he was violating his franchise, is that correct?

A. I don't understand the question.

Q. What do you want? Time to think?

Mr. Bernard: I object to that.

The Court: Go ahead.

(Question read.)

A. Yes. [366]

Q. (By Mr. Rankin): You only took a few days out of July, 1947, for a vacation, didn't you?

A. That is right.

Q. What date did you leave Portland?

A. I don't remember dates, exactly.

(Testimony of Raymond Rightmire.)

Q. The first part or the last part?

A. The latter part of July, though, sir.

Q. For your vacation? A. Yes.

Q. What business were you working in before you left? A. Before I left for a vacation?

Q. Yes.

A. I was working for Paramount Pest Control Service.

Q. And where were you working for Paramount Pest Control Service?

A. I had been working in the Eastern Oregon territory

Q. When did you leave Portland to work on the Paramount Pest Control Service in Eastern Oregon? A. Some time the first part of July.

Q. And where did you go?

A. Went to Eastern Oregon.

Q. Whereabouts in Eastern Oregon?

A. That *would* The Dalles, Hood River, Pendleton—

Q. Where did you go after you left there, do you remember?

A. I imagine it was Hood River, up that way.

Q. Then where did you go?

A. From Hood River to The Dalles, Pendleton, Heppner, Hermiston, LaGrande, Baker, Union—around that territory as the main highway runs.

Q. Did you go to Boise? A. Yes, sir.

Q. The record here shows that a cancellation came in to Paramount Pest Control Service from concerns on your route very shortly after your visit to that section. Can you account for that fact?

A. I could, in one way.

(Testimony of Raymond Rightmire.)

Q. All right; any way that is the truth.

A. They sent their man into that territory and he told patrons of Paramount Pest Control that I was not only completely out of pest control but that I was in jail and that I was in court, and those people out there knew me personally, Mr. Rankin, and they knew I was not in jail.

Q. They saw you, didn't they?

A. They saw me after the man had told them that. That is why they lost customers out there.

Q. What man told you that?

A. The territory generally, in every town that was told to me.

Q. Can you name an instance?

A. At the Dairy Co-Operative Association in Hood River.

Q. Who was the Paramount man that they said told them that [368] you were in jail?

A. Mr. Elfers, if I remember right.

Q. Mr. Elfers? A. Yes.

Q. When did he see the accounts that you saw?

A. That I wouldn't know.

Q. This record will show that in some instances there were accounts that you called on, and they wanted to know whether you were still with Paramount. Would you think that Mr. Elfers was the one who had breached any business ethics if they laid the cancellations onto you?

A. It was through his contact——

Q. What if a customer says that you made the statement that they were not competent to carry on this business?

(Testimony of Raymond Rightmire.)

A. I would like to have you get one of those customers in here.

Q. I suppose you would. It is a safe thing to say. They did not believe you were in jail when they saw you there?

A. No, but they formed an awfully bad opinion of the man that had claimed that I was.

Q. I should think they would, if he made that statement. You went on as far as Boise and you also went to Bend, did you not?      A. Yes.

Q. You wish to tell this Court that you didn't know all the [369] time you were making this trip that Mr. Brewer was going in for himself?

A. I don't wish to tell the Court that.

Q. What do you wish to tell the Court about your knowledge of whether, when you were serving on this trip, you were going to continue to serve Paramount Pest Control customers?

A. Is that a question? I didn't understand.

(Question read.)

A. I was serving the customers of Brewer's Pest Control then. They had agreed to and wanted my services.

Q. Did you solicit them?

A. Lots of them, yes. I solicited all potential business in every town.

Mr. Rankin: That is all.

Mr. Bernard: That is all.

(Witness excused.) [370]



## EARL MERRIOTT

was thereupon produced as a witness on behalf of defendants and, being first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Bernard:

Q. Mr. Merriott, where do you live, sir?

A. 706 Southeast Fourteenth Avenue, Portland, Oregon.

Q. How long have you lived in Portland?

A. Oh, about twenty-four years.

Q. When did you go into the pest control business?

A. I went in in the first part of February, 1947.

Q. Had you ever been in that business before?

A. No.

Q. When you entered their employ, what did you do?

A. I spent about three or four days with Ray Rightmire, who was showing me more or less of the groundwork on pest control.

Q. You went around with Mr. Ray Rightmire. What did Rightmire show you?

A. Oh, more or less putting out bait for rats.

Q. How did he tell you to do it?

A. We used vegetables, fish and meat, whatever was called for, and mixed it up in a gallon can or container and he showed me the use of the poisons, or the amount to put in, and we placed it out at what he was telling me was safe places in restaurants or wherever the place was we was servicing.

(Testimony of Earl Merriott.)

Q. How long did you work with Ray?

A. About four days.

Q. Were you at any time furnished with any formulas or trade secrets or things of that kind?

A. No, sir.

Q. After working four days and watching Rightmire do that work, what did you do then?

A. I went strictly on my own. I would be at the office at 8:00 o'clock in the morning and either Mr. Brewer or Mr. Rightmire would line me out on my stops for the day, which I made.

Q. How long did you continue to work in that fashion?

A. I worked until the last part of July, about the 30th or 31st.

Q. When, if at all, was the first time you knew Mr. Brewer had severed or intended to sever his connection with Paramount Pest Control Service?

A. I don't remember the exact date, but it was on a Saturday around a little after noon. Mr. Hilts and Mr. Brewer and—I don't remember exactly if Mr. Duncan was there at that time or not—but it was out at Mr. Brewer's home and Charlie told me that he was through, that I would be no longer working in his employment.

Q. You say that was the last of July?

A. Yes.

Q. On a Saturday afternoon? [372]

A. Yes.

Q. Mr. Hilts was there?           A. Yes.

(Testimony of Earl Merriott.)

Q. Did you have any information at all, either directly or indirectly, from Mr. Brewer on that subject prior to that time? A. No, sir.

Q. Had he ever talked to you about forming his own company and you going to work for him?

A. No, he hadn't.

Q. There is testimony at some place in this case that one of these Paramount Pest Control Service men, about that time, asked you if you were going to work for Paramount. A. Mr. Hilts.

Q. Was it at that time?

A. It was at that time.

Q. That was the first information you had?

A. That is right.

Q. What did you tell him?

A. I didn't tell him anything. He told me. He says, "You know that Brewer is breaking from Paramount?" And I said, "I had heard something but I didn't know what it was all about," and he wanted to know if I would continue to work for Paramount and I said, "Well, if Brewer is out, I want to make a living and I do like pest control and I will work for you."

Q. Why didn't you go to work for them? [373]

A. Well, at that time, that particular time, I was having car trouble and was working on my car at Brewer's home.

At that time I was working on my car. My car had broke down and I was working on it at Brewer's home, and I finished the job, oh, late in the afternoon. As Mr. Rightmire had been more or less on

(Testimony of Earl Merriott.)

the sick list, I dropped out to see him, and that is when I heard that he was through with them, that they had offered him some agreement, better than his position was in the past, and he had turned it down. Well, I was more or less curious to find out why.

The only thing he would tell me, he said, "Well, they want you to work for a while, but only for a while," and that I probably would not last very long. That statement was made to him by Mr. Hilts.

Mr. Rankin: How do you know?

Q. (By Mr. Bernard): Mr. Rightmire claimed that statement was made by Mr. Hilts?

A. Mr. Rightmire told me that statement was made by Mr. Hilts.

Q. When did you go to work for Brewer?

A. Oh, I believe it was the following Monday.

Q. When did Mr. Brewer contact you about going to work for him?

A. He didn't. I went over to talk to him, to find out.

Q. You went over there?

A. To find out what the score was and what he was going to do. [374]

Q. What?

A. I went over and talked to him, to see what he was going to do.

Q. What did he tell you?

A. He told me that he was going into business for himself, and asked me if I wanted to go to work for him and I said, "Yes."

(Testimony of Earl Merriott.)

Q. That was after this talk with Hilts?

A. With Hilts.

Q. Did you at any time enter into any agreement or understanding with Brewer or anybody else that Brewer was to quit Paramount Pest Control and that you boys would take over the business of the Paramount Pest Control Service? . A. No, sir.

Q. What relationship did you have to the business? Did you have any interest in the business?

A. No, sir. I work for a weekly wage.

Q. What? A. I work for a weekly wage.

Mr. Bernard: I think that is all.

#### Cross-Examination

By Mr. Rankin:

Q. You said that you applied whatever poison there was for the pest. Did you know the kinds of pests? A. Yes. [375]

Q. Could you analyze what poison was best for them?

A. Not at that time, but Mr. Rightmire showed me.

Q. Did you know what ingredients were in the poisons that you used? A. No, sir.

Q. How did you know what poison was for what pest? A. Mr. Brewer told me.

Q. Mr. Brewer told you?

A. He supplied me with any poisons I needed.

Q. You were another one of the defendants in the case brought in the Circuit Court, weren't you?

A. Yes, sir.



(Testimony of Earl Merriott.)

Q. Did you ever know, before that case was brought, about Mr. Brewer's franchise?

A. No, sir.

Q. You knew it then?           A. I heard of it.

Q. You saw it in your complaint, didn't you?

A. Yes.

Q. In that complaint in that case?           A. Yes.

Q. You knew about Mr. Rightmire's agreement; you knew about Mr. Duncan's agreement from that, didn't you?           A. Yes.

Q. Did that make any difference with you about going on and [376] serving with these men?

A. I was working for a living.

Q. It did not make any difference with you, then, did it?           A. No.

Q. Did you also serve customers of Paramount Pest Control Service, whom you knew to be customers of Paramount Pest Control Service, before August 1st and Brewer's breach or leaving, the same customers that he served afterwards or that you served afterwards for Brewer?

A. Would you mind repeating that?

Q. Yes. Did you serve the same customers for Paramount that you later served for Brewer?

A. Some, yes.

Q. Did you solicit those customers?

A. I solicited any potential business.

Q. Including those that you knew were under previous contract with Paramount?           A. Yes.

Mr. Rankin: That is all.

Mr. Bernard: That is all.

(Witness excused.) [377]

## ROSALIE BREWER

one of the defendants herein, was thereupon produced as a witness and, being first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Bernard:

Q. Mrs. Brewer, you are the wife of C. P. Brewer?      A. I am.

Q. You were his wife before coming to Oregon?

A. Yes, I was.

Q. You and he moved to Oregon from California?      A. Yes, we did.

Q. Will you tell the Court what work you did with reference to this pest control business for Mr. Brewer?

The Court: Do they have any children? Do these people have children?

Q. (By Mr. Bernard): Do you have any children?      A. I have a daughter, yes.

Q. How old is she?

A. She is going on fourteen, in June.

Q. Go ahead.

A. I help my husband in the office, post things in the books. That only requires sometimes a couple of hours, or three days a week, sometimes not that much.

Q. I understand from Mr. Brewer just now that the daughter is a daughter of yours by a former marriage? [378]      A. Yes, she is.

Q. How long have you and Mr. Brewer been married?      A. Six years in April.

(Testimony of Rosalie Brewer.)

Q. Go on with your answer.

A. I posted things in the books for my husband because he couldn't. At first, when I worked at the office of Paramount was when my husband was manager and the Paramount Pest Control Service paid me \$35 a month for part-time work in posting things in the books, at that office, because they figured they could not afford to hire a full-time girl.

Q. That \$35 a month, was that paid to you out of Mr. Brewer's salary or paid by Paramount?

A. By Paramount Pest Control Service.

Q. That is when he was acting as manager?

A. That is right.

Q. Go ahead.

A. And after Mr. Brewer took the franchise, I continued to help him because he could not afford to hire a girl. I did not spend all my time at the office, because I also ran my home.

Q. Did you do just book work?

A. Yes, that is all. I am not a bookkeeper.

Q. Do you, yourself, have any personal knowledge as to the circumstances under which Mr. Brewer changed from a manager's contract to a franchise?

A. Yes. I was there when Mr. Sibert offered my husband a [379] franchise in our home.

Q. What was said at that time? That was in Portland?

A. This was in Portland.

Q. Go ahead.

A. It was in the breakfast room of our home. My husband called me from the living room and

(Testimony of Rosalie Brewer.)

told me what Mr. Sibert had told him and asked me, "What do you think, dear?" He said "It is our money, you know."

I said, "Well, we haven't much of a choice. We are here. We have our home here, and it is entirely up to you just what you do."

Q. Had you heard any of the talk prior to that time between Sibert and your husband?

A. Why, yes. Right after that Mr. Sibert told me that within a few years' time my husband would be giving me a thousand dollars a month to run my home, and I laughed and said, "I would not know what to do with a thousand dollars if he gave it to me."

Q. Was that before this franchise contract was signed?           A. Yes.

Q. After that time you continued to do this book work, did you?

A. I helped my husband whenever he needed it, yes.

Q. Do you have any personal knowledge of what took place in March when they had some dispute over whether it was to be [380] divided on a 50-50 basis or not?

A. The only knowledge I had was when my husband turned to me——

Q. Just a minute. Was anybody there at the time?

A. Mr. Hilts and my husband and I were in the office when Mr. Hilts asked for franchise money

(Testimony of Rosalie Brewer.)

and my husband turned to me and asked me to make out a check. I hesitated and got red in the face. He yelled at me, which he doesn't usually do, and told me to make it out.

Q. That was the check that was drawn in March?      A. That is right.

Q. You say your husband yelled at you. What did he say?

A. My husband does not usually speak very harshly to me.

The Court: You are lucky. Hardly any other woman can say that.

A. Maybe not, but I can.

Mr. Bernard: Well, go ahead.

A. He told me to make out that check in a certain tone of voice that he does not usually use.

Q. What did he say to Mr. Hilts?

A. Nothing at that time, except that he handed him the check.

Q. Were you with him when he talked to him?

A. No, sir, I wasn't.

Q. There is in evidence here a copy of a letter dated March 15th from Hilts to your husband. You are familiar with that letter, are you? [381]

A. I signed for it.

Q. When did that letter come to your home?

A. On a Sunday morning.

Q. Was it a special delivery letter?

A. Yes.

Q. Sent by airmail?      A. Yes.



(Testimony of Rosalie Brewer.)

Q. And you signed for it? A. Yes, I did.

Q. Did you go down to Oakland with your husband in the latter part of June?

A. No, I didn't. I was in California, visiting my sister.

Q. Did your husband meet you there?

A. Yes, he did.

Q. About what date?

A. Around the last part of June.

Q. Did you go to Oakland with your husband, then? A. Yes.

Q. When did you get in Oakland?

A. We came from Cupertino, California, Monday morning to Oakland to the Paramount office.

Q. Did you see Mr. Sibert?

A. Not at the office. Mr. Fisher took us to the home.

Q. Mr. Fisher took you to Mr. Sibert's home?

A. Yes. [382]

Q. Tell the Court about what the conversation was, generally, in Mr. Sibert's home?

A. Well, they were friendly when we came in. That afternoon he told me that I didn't need to work myself and I asked why. I didn't understand it. I said, "I don't understand what you mean at all," and he said, "Well, Charlie can afford to hire a girl now."

I said, "Well, I don't see where he can, where I have been doing that," and I said, "I don't see why he has to get a girl at \$150 a month when it just

(Testimony of Rosalie Brewer.)

takes me a short while to do that work, and I could use it myself," and he said, "Rosalie, Charles has made \$10,000 in this last year," and I said, "I haven't seen a cent of it."

Q. What happened then?

A. I felt very bad about it, enough so I was mad about it.

Q. You knew about what he was making?

A. Yes, I did.

Q. Where did you go then?

A. Well, we had dinner there and then, later on in the evening, I went upstairs and I cried.

Q. With reference to that time, when did you return to Portland?

A. We came back to Portland the following day.

Q. By plane? A. By plane. [383]

Q. Were you informed then by anybody that there was any proposed change?

A. My husband did start to discuss it with me on the plane but I got ill, and then we talked about it after we got home.

Q. Well, what did he tell you?

A. He told me they wanted him to go back on the 20-80.

Q. Who wanted him to go back on the 20-80 plan?

A. Mr. Sibert wanted him to go back.

Q. Did your husband seem agreeable to that?

A. No, sir.

Mr. Bernard: I think you may cross-examine...

(Testimony of Rosalie Brewer.)

Cross-Examination

By Mr. Rankin:

Q. Did you know about the 20-80 plan, Mrs. Brewer?

A. Yes. My husband and I had talked about it, yes.

Q. When did you first learn about the 20-80 plan?

A. When he first took the franchise?

Q. July 1, 1947? A. That is right.

Q. Did you know of the 20-80 plan before that?

A. No.

Q. Your husband had never discussed whether or not he wanted to go under the franchise?

A. No, sir.

Q. Did he tell you when he had signed the 20-80 franchise? [384] A. I beg your pardon.

Q. Did he tell you when he had signed the 20-80 franchise?

A. He told me when he signed it, yes. I mean he signed it, yes, but I don't know the exact date. I wasn't with him.

Q. Some time in July, 1947?

A. Some time in July, yes.

Q. He subscribes that there was a change made in that 20-80 franchise some time after it was signed. Do you know when that change was made?

A. My husband and I went to Oakland in November. He was telling me that he could not go any longer on that 20-80 basis, that we were not

(Testimony of Rosalie Brewer.)

making any money, and that we had used all of our savings to live on that we had, and that was the reason we went to Oakland in November.

Q. Had you then determined not to go on with the franchise if you could not get a modification of it?

A. I am sorry. I didn't have anything to do with that myself.

Q. Did your husband—

A. I didn't think so much about it. He only discussed it with me.

Q. Your husband discussed it with you, did you?

A. He did talk about it, yes.

Q. Did he tell you whether or not he was going on with the franchise if he could not get a modification?

A. He didn't say anything about that one way or the other. [385]

Q. One way or the other?

A. No, sir, not to me.

Q. Your November conference was very satisfactory, was it not?

A. Yes, they were very cordial. In fact, the only conversation that I heard about was in the Athletic Club when Mr. Fisher came in—we had not seen him yet—and he shook hands around and said, "Hello." Ted Sibert said, "Charlie has agreed," and told him about it, and all I remember is that Mr. Fisher said, "Well, we can do that with Charlie, but we couldn't with Ossie in Seattle."

(Testimony of Rosalie Brewer.)

Q. How long was the 50-50 agreement, as you described it, to last?

A. Well, what my husband told me, it was to last from then on.

Q. You did not hear any conversation with any of the Paramount people at all?

A. No, I didn't.

Q. Did anyone tell you any different, at any time subsequently?      A. What do you mean?

Q. Did anyone from Paramount tell you anything different?      A. No, not me, no.

Q. You have testified that you were red in the face, I believe.      A. I was.

Mr. Rankin: May I see the exhibits, please, and particularly [386] the check, the February check?

Q. This check that I hand to you is dated February 6, 1947. Is that your signature attached to it?      A. That is my signature?

Q. Yes; is that your signature attached to it?

A. That is my signature, yes.

Q. Were they asking you for money at the time you signed this check?

A. My husband asked me to make the check. That is all I know about it.

Q. You don't know whether they were asking you for money or not?

A. No, I don't. I wasn't at the office very often.

Q. How did you happen to select the \$250.

A. He told me to make it out for that amount and that is what I did. He ran the business. I didn't.



(Testimony of Rosalie Brewer.)

Q. Did you tell Mr. Hilts at that time you wished it were was more?      A. I don't recall.

Q. Were relations friendly at the time *between* and Paramount Pest Control Service, at the time that check was drawn?

A. I believe so.

Q. As a matter of fact, they continued friendly down to the 24th of July, didn't they?

A. The 24th of July?

Q. Yes. [387]

A. Yes, we were always friendly.

Q. They weren't friendly after Mr. Brewer terminated his agreement?

A. No, they have not been.

Q. But you don't recall whether or not you advised Mr. Hilts that you were not pleased about this \$250?      A. I don't remember, sir.

Q. Let me hand you this letter. Your name is Rosalie, is it not?      A. Yes, it is.

Q. I hand you this and ask you if that is a copy of your letter?      A. Yes, it is.

Mr. Rankin: We offer it in evidence.

Mr. Bernard: May I see it? No objection.

The Court: Admitted.

(Copy of letter dated 2/6/47 "From Rosalie to Harold" thereupon received in evidence and marked Plaintiff's Exhibit No. 81.)

Q. (By Mr. Rankin): This is the letter by which you sent the check?      A. Is it?

Q. I am asking you.

(Testimony of Rosalie Brewer.)

A. I don't know whether it is or not. If it is dated the same date the check is dated—— [388]

Q. The letter reads as follows—It is dated February 6, 1947.

A. Was that the date the check was dated?

Q. That is right.

A. Then it accompanied.

Q. It reads: "From Rosalie; to Harold." Who is Harold? A. Harold Hilts.

Q. "Am sending \$250 on the franchise. Best I can do today. There will be more when we can spare it without putting ourselves in a hole. I wish it was more but no can do.

"Charlie is in Salem. Boy, John sure is giving us the works. Most every account we have in that territory has been neglected for months and are the cancellations coming in fast and furiously. John is telling all the customers which he has kept happy some that we are going bankrupt and he is taking over that territory. Charles and Ray are both in there today and fighting it. It's like starting all over again."

You sent that letter? A. Yes, I did.

Mr. Rankin: That is all.

#### Redirect Examination

By Mr. Bernard:

Q. Who is this "John" that is mentioned as "giving us the works"?

A. It is a former Paramount employee that was here before [389] my husband came up here.

(Testimony of Rosalie Brewer.)

Q. Do you know what he was mad about?

A. Yes, I do. He was promised the manager-ship of Oregon before my husband came here and didn't get it.

Q. And he was mad about that?

A. Yes, he was.

Q. He was out there in the territory taking business away from Paramount?           A. He was.

Mr. Bernard: I think that is all.

Mr. Rankin: That is all.

(Witness excused.) [390]

### CHARLES P. BREWER

one of the defendants herein, having been previously duly sworn, was recalled and was examined and testified as follows:

#### Direct Examination

By Mr. Bernard:

Q. As far as possible, I want to avoid covering matters that you testified to previously and, unless the question calls for it, please do not cover the same ground.

It appears from the testimony of Mr. Conger that you started ordering cards and blanks and things of that kind about July 7th. Was that before or after you had been informed that Paramount Pest Control Service desired to go back on the 20-80 basis as of the 1st of July?

A. That was afterwards.

(Testimony of Charles P. Brewer.)

Q. Why did you start ordering these articles at that time?

A. Well, I had already told Mr. Sibert that I was going to break, but, in my exact words, I would carry the business through the month of July, and that is all, and I figured that at any time he might break in here with ten or twelve men and start to grab, and, if he did, I was going to have some printing handy. On July 9th, when Harold was up here to audit the books, he pulled the first audit or balance sheet, as you might call it, showing me somewhere around \$3,900 owing Paramount.

The Court: That has all been covered. [391]

Mr. Bernard: I don't care about that.

Q. Have you got in the courtroom here an empty can containing this 1080 that you purchased from the U. S. Fish and Wild Life?

A. I have.

Q. Is this the can in this bag?

A. That is one of them.

Q. In what shape did the can come to you that you purchased from Paramount Pest Control Service?

A. Well, they were the same sized cans, identical with that, except that they had the Paramount labels.

Q. What did the Paramount label look like?

A. That is a long label. In the exhibits I believe they have somewhere around three of them in there. They are red, more of a red label.

(Testimony of Charles P. Brewer.)

Q. I notice that this label is scratched a little bit. How did that happen?      A. I did that.

Q. When?

A. When I emptied the can. The can is quite empty with the exception of a little bit of residue that has not been washed out thoroughly. Any time I empty one of these cans, I invariably scratch the label to tear it apart and try to get it off of there, and then get rid of it so it cannot contaminate anything and nobody can pick it up and come in contact with any of the poison. [392]

Q. Was there a Paramount label ever on this can?      A. No, there never was one.

Q. Mr. Hilts has testified about the amount of money that was in the bank in Portland, the bank account in Portland. Who opened that bank account?

A. I opened that bank account with money from my savings. I opened it up in the First National Bank and shortly thereafter they notified me that Paramount had an assumed name certificate filed, the partnership here in Oregon, and I couldn't have a bank account there unless I filed an assumed name and Mr. Sibert was here right—Oh, it was shortly thereafter. I don't know. I guess it was around the first of May, but I did let the bank account ride, and I went up to the courthouse and got a withdrawal slip and gave it to Mr. Sibert and asked if he would fill it out so I could file an assumed name and have the bank account. He said he would let



(Testimony of Charles P. Brewer.)

me know. I got a letter back that may be along that line. He said that their attorneys said that they still had an interest in this business up here and they would not release the assumed name certificate, so I went down to the bank and talked to them——

Q. I don't care to go into all these details. When you finally opened up the bank account, who could sign checks on it?

A. My wife, I know for sure—I gave her authority at the [393] bank—and myself and no one else.

Q. Was anybody present when you closed that bank account?

A. Mr. Hilts was with me when that bank account was closed on August 2, 1947. I closed the account and Mr. Hilts turned to the man, the minute I said I wanted the account closed, and said, "I want to open an account."

Q. Mr. Wendy Fisher has testified that along about July 30th he had a conversation with you and Mrs. Brewer. He further said that you went to the Roosevelt Hotel and, after dinner, went up to his room and he quotes you as saying that you were quitting and taking all the Paramount employees with you; that they had been collecting all the money they could and if there was a dollar left Paramount could be lucky; and that Paramount would be in no position to take care of their accounts for some months to come.

(Testimony of Charles P. Brewer.)

Will you tell the Court what your recollection is of the conversation in Mr. Wendy Fisher's room that night at the hotel?

A. Why, yes, we had gone out to dinner, and we came back up. We were friendly. We always have been. He had come back down through Washington and when I found out from him that he had not been near California, nor heard from them for a week or so, then I told him that he did not know the news.

I told him I was breaking with Paramount and he said, "What for?" And I told him. [394]

I told him of the different things that had come up, that I was not getting along, and I just gave him a resume of my relations with Paramount and he told me, "Well, Charles, you have just got to protect yourself, that is all there is to it," and—Well, I will leave that out.

I didn't tell him, though, that I was taking all the employees with me. I don't remember saying anything about the bank account because there was no bank account here of Paramount's. It was mine.

Q. Mr. Brooks testified that he was here around August 2nd, went out to your house. Do you recall Mr. Brooks being there?

A. Oh, yes, he came out. Mr. Duncan was staying with us at the time. He was getting ready to go on his vacation.

When I had taken my little girl to California, we had met Mr. Sibert at the airport. Raymond

(Testimony of Charles P. Brewer.)

Rightmire and Carl Duncan had driven me and my daughter to the airport to take the plane, and while we were waiting for the plane to take off Carl Duncan asked Mr. Sibert to have Harold Hilts get his vacation check ready for him, that he wanted to go the first of August to Oklahoma on his summer vacation and that he *was* supposed to be entitled to two weeks' vacation. Mr. Sibert began to hem and haw a little bit and said he wasn't working for Paramount, he was working for me, and Carl Duncan said he wanted that time off from the 1st of August for his summer vacation.

Q. This night on August 2nd, when Brooks came out to your [395] house—That was August 2nd, 1947, he says—you told him you were not going into business.

A. I don't remember whether I told him I was or was not or even mentioned it.

Q. Did you have any idea of telling him after August 1st that you were not going into business? Did you have any idea?

A. I don't remember telling him I was not going into business. I do remember telling him I broke from them.

Q. As a matter of fact, you were in that business by that time, weren't you?      A. Yes.

Q. Do I understand that this can is in a rather dangerous condition to handle?

A. It is. If everyone is willing, I or someone who is acquainted with it can take the can and dispose of it, but it must be washed out.

(Testimony of Charles P. Brewer.)

Mr. Bernard: I am not offering it in evidence unless counsel desires. It is here if anybody wants it.

Mr. Rankin: We do not want it.

Q. (By Mr. Bernard): Did anybody audit your books every month?

A. Mr. Hilts audited them most every month.

Q. I am turning to Exhibit 51 which they say consists of checks regarding which there is no supporting data, totaling \$925.99, charged to you. Have you examined this exhibit?

A. Yes, I have. [396]

Q. Were any of those items drawn by you personally, or for you personally?

A. They were drawn—Some of them were drawn for me for expenses and things like that; drawn to me, yes.

Q. They were drawn to you? A. Yes.

Q. Was any of the money expended by you otherwise than for business? A. No.

Q. I see these checks start a way back in September, 1946. At the time that Mr. Hilts would make his audit, would those checks appear?

A. Yes, had they come from the books.

Q. The books would show what items of expense those checks were for? A. They do.

Q. Did Mr. Hilts audit the books each month?

A. He did.

Q. Did he ever raise any question about those books when he would make his monthly audit?

(Testimony of Charles P. Brewer.)

A. If he did not understand one, he would ask me what it was and I would explain it to him what it was, and he accepted it.

Q. Was any attempt made to charge these checks to you personally until after this lawsuit was started? A. None whatsoever. [397]

Q. The books, you say, will show what these checks were for? A. They will.

Q. Mr. Glenn Fisher has testified that down in California, when you first talked with these people, that he furnished you a form of manager's contract and a form of the franchise, and you took them home and studied them for a couple of days and then brought them back. What is the fact as to that?

A. That was not so. I never met Glenn Fisher until after I had been on the job for Paramount and he had come up from Los Angeles to Oakland. I didn't meet him—Pardon me. I did meet him for a few minutes in the office one time just before I hired out, when he had just arrived from New York, I believe it was, and the next time I saw him was when I was working for the company.

Q. Regardless of when you met him, were you ever furnished these two forms of contract in California? A. I was not.

Q. Did you have them home or take them home in California? A. I did not.

Q. Will you examine Exhibit 36 which purports to be a sort of a settlement of accounts for twelve



(Testimony of Charles P. Brewer.)

months from July 1, 1946, to June 30, 1947, and will you examine that and state whether or not that accounting is correct or substantially correct.

A. I think that account is very wrong, and I sat down with Mr. Hilts and talked with him for quite a while about it. [398]

Q. What do you contend is wrong?

A. I contend that it was far too much money due Oakland. They have accounts receivable here; besides, they have half of the bank account here, money that lay in the bank, they have here, besides the accounts receivable.

Q. In other words, you, in that accounting here, are charged with the accounts receivable?

A. I am.

Q. And charged with a part of this bank account? A. Right.

Q. Do you know, in round figures in a general way, what you figure you owed them for the year ending June 30, 1947?

A. I owed them somewhere altogether—it is somewhere between \$2,500 and \$3,000.

Q. In other words, you figured you owed them that for the fiscal year ending June 30, 1947?

A. That is for the thirteen months.

The Court: Does he still owe them?

A. Minus \$1,200 that has been paid.

Mr. Bernard: I was going to get to that.

Q. In other words, you drew out how much for yourself?

(Testimony of Charles P. Brewer.)

A. Besides what I took in and put back, I drew \$2,200.

Q. You drew \$2,200. You still owe them between \$2,000 and \$2,500, which would have left you in the hole?

A. They got \$1,200 and I got \$2,200, and there is around \$3,600 [399] or more due and payable on the books when I left them, and it leaves somewhere around \$1,500 or \$1,600 that there is due off of the due and payables on the books.

Q. Did you attempt, when these books were turned over to you, to try to arrive at the amount that was either owing by Paramount or due to Paramount? A. I did.

Q. From your examination of the books, in the time they were turned over to you here a few days ago, you say you have attempted to arrive at how this account stands between the two of you?

A. I have.

Q. Did you make up a statement for that purpose? A. I did.

Q. Refreshing your recollection with that statement, do you figure at the present date you owe Paramount money or Paramount owes you money?

A. I would say Paramount owes me money.

Q. Would you explain to the Court, now, how you arrive at that conclusion, based on the books?

A. Well, the total business, as I have put it down here—I will concede there may be a mistake some place—is \$22,000—the total business for 1947, \$22,734. The total business in 1946 was \$12,321.70.

(Testimony of Charles P. Brewer.)

In 1946 against \$12,321.70 there is \$11,935.38 expenses, leaving a net profit of \$386.32, which was made out and put on my income tax as a net profit for that year.

That was taken to California and audited down there in 1947, as I have said. The total business in 1947, \$22,734.60; the total expenses for 1947, \$16,737.67 total business, minus \$308 depreciation, which is not the correct figure—I found out since that there is more—\$16,000. Wait a minute.

The total business in 1947 is \$22,734.60. The total expenses, including depreciation, is \$16,737.67, leaving a difference of \$5,996.93 net profit for 1947.

Q. Now, then, how did you arrive at the statement that Paramount was indebted to you?

A. I arrived at that by dividing half of the \$386.32 net profit in 1946, plus the net profit of 1947, which is \$5,996.93. Well, I divided each one of these figures and added the two halves together.

Q. I see.

A. And it shows an approximate amount due Charles P. Brewer of \$1,305.97. There is no place in these books that I can find that shows any accounts receivable at the end of July. The accounts receivable which I have figured out here to the best of my ability, figured around \$3,299 approximately.

Q. Accounts receivable?

A. Accounts receivable on the books when I turned the books over to them. [401]

(Testimony of Charles P. Brewer.)

Q. Has any accounting been made to you of that at all?

A. None to me. There has been an accounting pulled on the books, but I have never seen it.

Q. Who made that accounting?

A. That was made by Sawtell, Goldrainer & Company.

Q. What is the amount that the accounting that they compiled shows you owing?

A. The amount shows \$1,305.97 due me.

Mr. Bernard: You may cross-examine.

#### Cross-Examination

By Mr. Rankin:

Q. Where did you get these figures?

A. The books.

Q. You took them off yourself?

A. I took them off myself.

Q. You could have done that any time in regard to the accounting that Mr. Hilts made to you in June, could you not? You paid on it, didn't you?

A. Through errors in the books——

Q. Just answer my question. You paid on the accounting, didn't you?

A. I paid on the franchise.

Q. On the franchise? July 1, 1946?

A. I paid on the franchise, as modified. I never paid at any time prior to the modification. [402]

Q. If you made up this audit for yourself, why didn't you make it up early enough and submit us a copy so we could scrutinize it?

A. Because you had the books.

(Testimony of Charles P. Brewer.)

Q. How long did it take you?

A. I saw them three days beginning last Thursday or Friday.

Q. They were given to you immediately after the Court denied an inspection of this audit, weren't they?

A. They were given to me some time around last Thursday or Friday. I don't know the exact date.

Mr. Rankin: We won't argue about that. I think Mr. Bernard will admit they asked for them and they were received immediately after the Court denied an inspection of the audit.

Mr. Bernard: No question about that.

Q. (By Mr. Rankin): You mentioned Mr. Carl Duncan. Where is he?

A. To the best of my knowledge, Mr. Carl Duncan is some place around Bend, Oregon, at the present time.

Q. In your employ? A. He is.

Q. He has been at all times since August 1, 1947?

A. He has not. He has been in my employ since somewhere around August 18th to 20th.

Q. You pay him just like you pay these other men that are hired? A. I do.

Q. Where does he live? [403]

A. Well, that is a hard thing to say. He is traveling twenty-eight days out of the month.

Q. Does he ever come to Portland?

A. He does.

Q. When? A. At the end of the month.



(Testimony of Charles P. Brewer.)

Q. You knew we were looking for him?

A. Yes.

Q. You never advised us when he was in?

A. I never advised you when he was in, but I did tell you where you could contact him in Idaho.

Q. Did you also know we could not serve him in Idaho?

A. I did not. It is the U. S. Marshal—I thought he could serve there.

Q. In the payment of the June accounting, you paid down to \$3,100, didn't you?

A. I gave him that check for \$259.61 with the provision that if this accounting was right, I would pay the balance left.

Q. Why did you make that odd figure, \$259.61?

A. Because I hadn't had a chance yet to study this, and Mr. Hilts assured me himself that it was correct. I said, "I will pay the odd figure," somewhere around \$250, and he broke off the odd figures and took \$259.61.

Q. Did you ever advise them by letter that the accounting was not right? [404]

A. No, never.

Mr. Rankin: That is all.

(Testimony of Charles P. Brewer.)

Redirect Examination

By Mr. Bernard:

Q. May I ask you a couple of questions? You say Mr. Duncan went to work for you the 18th of August.

A. He had been going to go on his vacation and Paramount threw this first lawsuit in the Circuit Court and he was served with papers for that court hearing, and he was going to take in a wedding of one of his relatives down south and when that trial was finally thrown out of court, he could not get there in time for the wedding so he said he might as well stay here.

Q. Had you talked with him at any time prior to that time?

A. No. I told him to go on his vacation.

Q. In this compilation that you have prepared, on the first page you have the number "70." What are those numbers?

A. Those are the page numbers taken from the books.

Q. Then, on the second page I notice after certain items there will be "Expense, No. 70," and "Expense, No. 71." What do they refer to?

A. Those are items of expense listed in the ledger under No. 70 or No. 85, or whatever number it is here.

Mr. Bernard: I would like to offer that compilation in evidence. [405]

Mr. Rankin: We object to that, your Honor, on the ground and for the reason that very early in

(Testimony of Charles P. Brewer.)

these proceedings we asked for a statement from defendants as to these claims. Mr. Leo Smith took the deposition of Mr. Brewer in my absence and in that called for a statement of what these comprise. The answer in that deposition is "We can't make it until we get the books." Then they did not try to get the books, although they were offered them, and they were offered previously and they were offered subsequently, and then, when the motion was made and the Court denied an inspection of the audit, for the first time they accepted the books, and they just brought them back this morning.

Now, to come in at the last minute, when there is no opportunity for us to examine it thoroughly, I submit to your Honor is not proper. Fairness in the trial of a lawsuit would require, as we have done here, the compilation to be put in at the pre-trial and the other side given a little opportunity to check the fairness or accuracy or the integrity of a statement like that.

The Court: Objection sustained.

Mr. Bernard: That is all.

Mr. Rankin: That is all.

(Witness excused.)

Mr. Bernard: That is our case, your Honor.

Mr. Rankin: That is all.

The Court: The testimony is closed, is it?

Mr. Rankin: No rebuttal, your Honor.

The Court: When do you want to be heard?

Mr. Rankin: Whenever it suits the convenience of the Court:

The Court: It makes no difference to me. The record has never been cleaned up as to Dunean. He has not been served.

Mr. Rankin: No.

The Court: He should be dismissed out of the case, I submit.

Mr. Rankin: Yes.

The Court: Dismissed without prejudice.

Mr. Rankin: Yes, if you will.

The Court: Is there any objection to that?

Mr. Bernard: No.

Mr. Rankin: Just a moment, please, your Honor. We have tried our best to serve him. I think the evidence has shown that. I wonder if it would not be possible, since he has not put in an appearance, to have the case continued as to him.

The Court: You cannot break up a case that way.

Mr. Rankin: This is a conspiracy case and I thought possibly that might be done.

The Court: I don't think so.

Mr. Rankin: We will take a nonsuit as to him, without [407] prejudice.

The Court: So ordered. Leave it this way: He is dismissed out on my motion without prejudice. That does not commit you.

Mr. Rankin: Yes, your Honor.

(Thereupon the hearing in the above-entitled cause was continued until Saturday, January 24, 1948, at 10:00 o'clock a.m. for argument of counsel.) [408]

In the District Court of the United States  
for the District of Oregon

Civil No. 3936

PARAMOUNT PEST CONTROL SERVICE, a  
corporation,

Plaintiff,

vs.

CHARLES P. BREWER, individually and doing  
business as Brewer's Pest Control; ROSALIE  
BREWER, his wife; RAYMOND RIGHT-  
MIRE, CARL DUNCAN, EARL MERRIOTT,  
and all other persons associated with said de-  
fendants as herein described,

Defendants.

#### REPORTER'S CERTIFICATE

I, Ira G. Holcomb, a Court reporter of the above  
entitled Court, duly appointed and qualified, do  
hereby certify that on the 20th, 21st and 23rd days  
of January, A.D. 1948, I reported in shorthand the  
proceedings of the trial had in the above-entitled  
cause, that I subsequently caused my said shorthand  
notes to be reduced to typewriting, and that the  
foregoing transcript, pages numbered 1 to 408, both  
inclusive, constitutes a full, true and accurate tran-  
script of said proceedings, so taken by me in short-  
hand on said dates as aforesaid, and of the whole  
thereof.

Dated this 11th day of March, A.D. 1948.

/s/ IRA G. HOLCOMB,

Court Reporter. [409]



In the District Court of the United States  
for the District of Oregon

Civil No. 3936

PARAMOUNT PEST CONTROL SERVICE, a  
corporation,

Plaintiff,

vs.

CHARLES P. BREWER, et al.,

Defendants.

DEPOSITION OF CHARLES P. BREWER  
DEFENDANT

Taken as an adverse party on behalf of Plaintiff.

Be It Remembered that, pursuant to the oral stipulation hereinafter set out, the deposition of Charles P. Brewer was taken on behalf of the plaintiff before Ira G. Holcomb, a Notary Public for Oregon, residing in Portland, on the 7th day of January, A.D. 1948, beginning at 1:30 o'clock p.m., at Room 503, United States Court House, in the City of Portland, County of Multnomah and State of Oregon.

Appearances:

Mr. F. Leo Smith and Mr. George E. Birnie, of Attorneys for Plaintiff.

Mr. E. F. Bernard and Mr. Plowden Stott, of Attorneys for Defendants.

Stipulation

(It is stipulated and agreed by and between the attorneys for the respective parties that the deposi-

tion of the above-named defendant may be taken on behalf of the plaintiff as an adverse party, at Room 503, United States Court House, in the City of Portland, County of Multnomah, State of Oregon, on Wednesday, the 7th day of January, A.D. 1948, beginning at 1:30 o'clock p.m., before Ira G. Holcomb, a Notary Public for Oregon.

(It is further stipulated that the deposition, when transcribed, may be used on the trial of said cause as by law provided; that all questions as to the notice of the time and place of taking the same are waived; and that all objections as to the form of the questions are waived unless objected to at the time the questions are asked; and that all objections as to materiality, relevancy and competency of the testimony are reserved to the parties until the time of trial.

(It is further stipulated by the attorneys for the respective parties that the reading over of the testimony to or by the witness and the signing thereof are expressly waived.) [2\*]

Mr. Bernard: You understand, Mr. Brewer, that, after your testimony has been transcribed by the Court Reporter, you have the privilege of reading it over and signing your deposition; or you may waive that.

Mr. Brewer: Let it go as it is. I will waive signing it.

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\*Page numbering appearing at top of page of original Reporter's Transcript of Record.

CHARLES P. BREWER

one of the defendants herein, produced as an adverse party on behalf of the plaintiff, having been first duly sworn to testify the truth, the whole truth and nothing but the truth, was examined and testified as follows:

Direct Examination

By Mr. Smith:

Q. Mr. Brewer, according to the pleadings, I believe it is true that you acknowledge signing the sales agent agreement with Paramount Pest Control Service?

A. I signed the franchise, as I understand it.

Q. Did you consider that as a binding and valid contract?

A. At the time it was signed.

Q. Did the time ever come when you did not consider it as a valid and binding contract?

A. After they had refused to live up to it, I couldn't see where it was worth anything.

Q. What date was that?

A. That was shortly after the first of the year, 1947; was along about, oh, between the first of February and March. [3]

Q. Some time along the first of February or March, you considered that the contract was no longer binding?

A. It had not been lived up to at that time.

Q. But, prior to that time, you did acknowledge it as a binding contract?

A. Prior to then, yes.

(Deposition of Charles P. Brewer.)

Q. Is there any reason, other than your contention that they did not live up to it—Is there any other reason why you did not consider it a binding contract?

A. Other than that they did not live up to it and according to the way it was amended, shall we say, amended verbally.

Q. I think “modified” is the better word.

A. Or modified. That is a better word, yes.

Q. But, other than that, you considered it a binding contract?

A. It would have been had they lived up to it. I don't understand just what you are asking, there.

Mr. Stott: If you do not understand a question, I think you have the right to ask him to explain any part of the question you do not understand.

Q. (By Mr. Smith): What part don't you understand?

A. I don't understand what you mean by did I consider it a binding contract. It was a contract—It was acknowledged by both of us—and as long as they live up to it—When they refused to live up to it, I couldn't see that it was any more binding. [4]

Q. When did you first notify them that you did not consider it as a binding contract?

A. I didn't notify them in those exact words.

Q. What words did you use?

A. I notified them I would no longer be connected with them if they did not live up to it.

Q. When did you notify them of that?

(Deposition of Charles P. Brewer.)

A. I notified them of that in February or March the first time, again in April and in June.

Q. Was that notification in writing?

A. That was verbal.

Q. When was the first time you made any written notification to that effect?

A. About July 24th I wrote them a confirmation of my breaking from them, I think somewhere around the 24th of July.

Q. Will you identify those occasions as to when you orally notified the company that you were terminating the contract unless they lived up to its terms?

A. During the times when Mr. Harold Hilts was here in Portland, balancing the books, checking the books.

Q. Will you state those dates as nearly as you can?

A. I wouldn't know without checking the records as to what dates it was, no. All I can say is some time around the first of March and some time around the first of April and again the latter part of June.

Q. On those occasions was there anyone present besides yourself and Mr. Hilts?

A. My wife was present in February and I don't know for sure whether she was there in April but she was there again in June.

Q. When you say that the company was not living up to its terms, will you state that fully and completely and in detail just what you mean?



(Deposition of Charles P. Brewer.)

A. They are trying to get me to pay them 20 per cent on gross after it had been modified.

Q. That is your full and complete explanation?

A. That was the reason why.

Q. That is the only reason why?

A. That is why.

Q. That is the only reason?

A. That is the only reason why.

Q. When this contract was originally signed, you worked under it according to its terms for how long?

Mr. Bernard: May I ask you to qualify the question? Do you mean "worked under it" unmodified?

Mr. Smith: Yes.

Mr. Bernard: I see.

A. I worked under it until the end of—until Thanksgiving, 1946.

Q. (By Mr. Smith): Then, would you tell the story leading up to its modification? [6]

A. The company had been in the red when I took it over, much to my disgust, and not wanting it, and I carried it myself with the understanding that there would be no payments asked for on the business until it was out of the red and they came through. Mr. Hilts checked the books and kept handing me statements showing how much it was costing me and how it was running in the red, as it was, and, when I saw, even with that growth, it was going to break me and not pay anything at all—so, near the end of November, my wife and I drove to

(Deposition of Charles P. Brewer.)

California and I went to the office of the corporation. I told them I could not carry the business any longer under the conditions it was in. I couldn't financially handle it.

Q. You say you told them. Who?

A. I told T. C. Sibert, the president, and he said he would modify it to make it 50 per cent on net profit if I would carry on. I said, "All right, under that agreement, I can carry on." He asked me then, "Do you want this until the first of the year or do you want it for a year or two, or how do you want it? It is up to you.

I said, "I want it for the life of the contract, as long as we are operating," and he said, "All right. That is the way it will be."

Q. I will ask you if he said that, "When you take a dollar out of the business I will take a dollar out of the business?"

A. He said the words, "When you take home a dollar I take home [7] dollar."

Q. That was the understanding?

A. That was one of the remarks he made, yes. It was understood to be 50 per cent on net profits, because I had to live, regardless.

Q. Was it not finally agreed between you and Ted Sibert that when you took a dollar out of the business he would take a dollar out of the business?

A. Not in that exact category, no. It was understood to be 50 per cent on net profits, equally. I couldn't pay him dollar for dollar because the busi-

(Deposition of Charles P. Brewer.)  
ness was in the red and I was living out of my personal income as it was.

Q. Was there anybody besides you and Mr. Sibert present when this modification was made?

A. There were several of the company in and out of the office. He and I were talking more or less personally. His secretary was there, not recording the conversation, though.

Q. Who would you say was present who could have heard the conversation?

A. The conversation, as such, was not exactly heard in its entirety by anyone except at the end of the conversation, Glenn Fisher came in, also Harold Hilts, and Ted Sibert told them that he had just reached an agreement with me—that I could not carry on the way it was, and that we had reached an agreement where we would split the net profits.

Q. Ted Sibert said that in the presence of Glenn Fisher and Harold Hilts?           A. Right.

Q. And yourself?           A. Right.

Q. And you four were the only ones present?

A. Yes.

Q. Your wife was not present?

A. Not at that particular time that I remember. She could have been, but I would hate to make that too emphatic because I do not remember the exact circumstances.

Q. Was anyone present besides yourself when Mr. Sibert agreed that the duration of this fifty-fifty division of net profits should be continuous and not limited to the first of the year?

(Deposition of Charles P. Brewer.)

A. He told that to Mr. Fisher and Hilts. They were not there when it was agreed upon, though.

Q. You did run along on this contract with the modification until the first of the year?

A. Yes.

Q. Up until that time you had no difficulty as far as your remittances to the company were concerned and your understanding with the company?

A. It was only one month practically and there were no remittances paid.

Q. It was not retroactive to the first of July?

A. Was retroactive to the beginning of the franchise.

Q. So, then, it covered a period of from July 1st on?      A. Right.

Q. When did someone from the company tell you that that modification agreement was effective only until the first of the year?

A. Harold Hilts presented me with a statement of what I was supposed to owe the company, some time around the end of February or the first of March, and the statement showed 20 per cent gross business——

Q. Pardon me. You mean 20 per cent of the gross business subsequent to the first of the year?

A. Subsequent from July 1st, from the 1st of July on up.

Q. From the 1st of July on up?      A. Yes.

Q. In other words, that statement did not recognize that modification agreement at all?

(Deposition of Charles P. Brewer.)

A. None whatsoever. He presented me with that statement. I had sent them \$500, or close to it. I gave them a check for a balance of four hundred and some odd dollars, and told him after handing him the check—I drove to the airport and told him I was completely done with the whole——

Q. You are traveling a little too fast for me there. Let's go back to this statement that Mr. Hilts presented to you in the latter part of February or the first part of March.

You say that was the first time when anyone from the [10] Paramount Pest Control Service indicated that the fifty-fifty agreement was not going to be lived up to by the company?

A. That is the first, from the corporation, from the time I talked with Sibert. They had not come to balance the books during January.

Q. When Hilts presented you with such a statement and you had a chance to look it over and to analyze it, what did you say to him?

A. I did not look it over or analyze it. I only glanced at it enough to see they were wanting me to pay them 20 per cent. I turned to my wife and told her to make them out a check for the exact amount of dollars necessary, and handed it to him and told him I was done.

Q. When you say you were done, that was at this meeting the latter part of February or the first of March?           A. Yes.

Q. You told your wife to write out a check?

A. Right.



(Deposition of Charles P. Brewer.)

Q. What was the amount of that check?

A. Four hundred and some-odd dollars.

Q. How did you arrive at the amount of that check?

A. His statement showed me owing them nine hundred some dollars and I had already given them \$500, and I gave him the balance and told him I was done.

Q. So, then, you did pay the balance owing, according to his [11] statement?

A. According to the statement, which I knew at the time was not correct.

Q. Even though you knew it was not correct, you wrote out a check for that amount and handed it to Hilts?      A. I did.

Q. You did not stop payment on that check?

A. I did not.

Q. And you say that you told Hilts you were done, that you were through?

A. I was through, yes.

Q. But you did not give him any written notice?

A. I did not.

Q. Did you continue to work for the company?

A. I continued in this respect—that was Friday evening, and I would have given them time enough to get someone to take my place.

Q. Yes.

A. And Sunday morning at 9:00 o'clock I received a special delivery letter from Hilts, apologizing and stating that it was supposed to be a fifty-fifty proposition.

(Deposition of Charles P. Brewer.)

Q. Yes. So, when you received that letter, what did you do?           A. I continued operating.

Q. Then did you have an adjustment?

A. No. You couldn't adjust anything. I never could understand [12] their figures fast enough to adjust them.

Q. After you received the letter—you received it Sunday morning, is that right?           A. Right.

Q. That was around the first part of March?

A. Right.

Q. You continued to work for the company, did you?

A. I continued to work for myself, under that name.

Q. Under this franchise agreement?

A. Yes.

Q. As modified?           A. Right.

Q. When is the next time you had any difficulty with Mr. Hilts regarding remittances?

A. That was some time the first part of April.

Q. About a month later?

A. Somewhere around that.

Q. Tell us, if you will, please, the full background and everything that led up to your disagreement with Hilts around the first of April?

A. The first of April he came through to check the books again and presented me with a statement and asked for money. I told him I was not, at that exact time, able to pay it and he said, well, he had to have it.

(Deposition of Charles P. Brewer.)

I told him I could not pay it to him and he said there [13] had to be some arrangement where I could borrow money or something. I told him according to my agreement with the Paramount Corporation I would not have to pay them any money until the business was on its feet and that, if they were going to demand money, if it meant my running into debt to pay them something, I would get rid of it, and he immediately told me, then, they were not wanting me to dump it and get out of it in any way, that they wanted me to hang on and that they would not press payment.

Q. Did you pay Hilts any money at that time?

A. No.

Q. What I meant to say was: Did you give him a check?           A. No

Q Payable to the Paramount Pest Control Service?           A. No, I didn't.

Q. Did you tell Hilts that you were going on, then?

A. I told him I would dump it if they tried to force payment on me, get me into debt.

Q. What did he say?

A. He said they would not force payment in that case.

Q. Then, was there any other conversation between you and him at that time pertaining—

A. Not pertaining to that.

Q. Pertaining to keeping the franchise or not?

A. No. [14]

(Deposition of Charles P. Brewer.)

Q. When is the next time that you and Hilts came together to make an accounting?

A. I think it was some time in June.

Q. So, between April 1st and June, you and Hilts never got together regarding any accounting?

A. We never saw each other. I was out of town.

Q. During all these times the dealings were with you and Hilts? You never had any agent representing you, did you?

A. I never had any agent representing me?

Q. Like your wife? A. No.

Q. It was you who would carry on your own business? A. Right.

Q. Fine. About when was it in June, Mr. Brewer, that you and Mr. Hilts came together again for an accounting?

A. The latter part—I don't know the exact date; some time, I would say after the 24th.

Q. Tell us, if you will, please, the full and complete story in detail of what took place.

A. He told me—he presented me with another statement from the books, showing moneys that I did not believe I owed. We argued over moneys due them for supplies and some equipment that I had taken over from them and, after arguing around all day, he presented me with a statement, showing me owing them somewhere around \$3,000. [15]

I told him I did not understand it as that and I did not believe it was right. He said, well, he was in a spot himself and wanted some money to take

(Deposition of Charles P. Brewer.)

back with him and asked if I would give him a few dollars, some kind of a token payment. I told him— He said it was correct, as far as he could see. I told him, well, I couldn't see it. I did not have time to check it, but I would give him a check. I gave him a check for \$200, two hundred some dollars. If the statement had been correct, it would have cut off the tail end of it, two hundred and some-odd dollars.

Q. So you did make out a check in odd figures as a payment on that statement which he submitted to you?

A. As a payment on moneys due them.

Q. And that left a balance in round figures?

A. Yes.

Q. And that was on June 24th?

A. Somewhere around the latter part of June, between the 25th and the 1st of July.

Q. So, when Mr. Hilts left you that date, he took a check with him?

A. Yes, I think he did.

Q. And that check was drawn on a Portland bank? A. Yes.

Q. And you never stopped payment on that check? A. No. [16]

Q. Did you ever at any time write any letters to the Paramount Pest Control wherein you denied that particular accounting that was had between you and Mr. Hilts? A. No.

Q. When did you send them a notification in writing of your termination?



(Deposition of Charles P. Brewer.)

A. At the end of July. That was a confirmation of the verbal.

Q. I beg your pardon?

A. That was the confirmation.

Q. What was the verbal language then?

A. I told Hilts according to their figures, according to the way they were going—would not live up to their contract—I was quitting Paramount and getting away from it.

Q. When did you tell him that?

A. I told him that the first part of—it was either the very end of June or the first part of July.

Q. Was that after you had paid him the money?

A. That was right around the time I paid him the money. He was here twice. I can't recall which time.

Q. Was there anybody present besides you and Mr. Hilts when this conversation went on?

A. I don't know whether there was or not.

Q. As to the moneys owing either you or the company, by one or the other, what would you say was the amount that either one of you owed to the other at this time? [17]      A. At this time?

Mr. Bernard: May I interrupt here just a moment? We have served a notice to produce the audit made by Goldrainer & Sawtell or Sawtell, Goldrainer & Company—whatever it is—have you got that with you?

Mr. Smith: I do not have that with me, but I think it can be obtained. I think it is in Mr. Ran-

(Deposition of Charles P. Brewer.)

kin's file. The reason that we did not produce it is that we do not think we are required to produce it. If the Court orders us to produce it, we will be glad to produce it.

Mr. Bernard: Well, I want to say to the witness that if he needs any documentary evidence in order to answer the question intelligently, he is entitled to have it.

Mr. Smith: Well, I will put the question to the witness and then we will let him answer it.

Mr. Stott: Mr. Brewer, did you understand what Mr. Bernard said.

A. Will you repeat the question?

Mr. Stott: Repeat the question. Read the question, Mr. Reporter.

(Question read.)

A. I can't say the exact amount because of not having the audit.

Q. (By Mr. Smith): To the best of your knowledge, what do you believe the amount to be?

A. I don't know. I would hate to say unless I had the audit [18] and inventory of equipment turned over to them.

Q. Are you contending that the company owes you any money?      A. I am.

Q. How much are you contending that they owe to you?

A. I don't know any particular figures except I believe the audit will show around \$2,000.

(Deposition of Charles P. Brewer.)

Q. Have you at any time stated what you believe the company owes you?

A. They won't talk to me. They won't even get on the phone.

Q. I asked you if you have ever stated—

A. I cannot.

Q. You have not stated it? A. No.

Q. Do you deny that you owe any money to the company? A. As a final settlement, yes.

Q. Did you at any time make a claim for \$700 by reason of your performance of the contract as modified? A. I cannot contact any of them.

Q. You have not answered the question.

A. I tried to.

Mr. Stott: Read it.

(Question read.)

A. Not to them.

Q. (By Mr. Smith): Did you make it through your attorneys? A. In an affidavit. [19]

Q. In an affidavit?

A. Yes, or answer, I would say.

Q. So, in your pleadings you do contend that the company is indebted to you in the sum of \$700 by reason of your performance of the contract as modified? A. I imagine I did.

Q. You also contend that the reasonable value of the supplies and equipment belonging to yourself and turned over by you to the plaintiff is the reasonable amount of \$1,350?

(Deposition of Charles P. Brewer.)

A. That is as far as I can say, without the inventory that we took at that time.

Mr. Smith: At this time I want to advise you that I do have the books of the company, the books that Mr. Brewer kept, and they are available to you if you want them. You can also take them providing—they will be given to you as an attorney.

Mr. Bernard: The books from which this Sawtell, Goldrainer & Company audit was made?

Mr. Smith: Yes. Do you want these books?

Mr. Bernard: I want the audit.

Mr. Smith: Do you want the books?

Mr. Bernard: No, I don't want the books now. I may want them later. If I do, I will ask for them.

Mr. Smith: I wanted to make the offer and wanted it to be in the record that I did offer you the books at this time.

Q. Mr. Brewer, do you recall giving to the Paramount Pest Control [20] Service, on February 6, 1947, a check for \$338?

A. I don't recall the figures or why that was given.

Mr. Bernard: At the pre-trial hearing the Court permitted these exhibits to be marked with the understanding that we would be permitted an inspection of them. When will you be through with them so that we can have them?

Mr. Smith: Any time now.

Mr. Bernard: All right.

(Deposition of Charles P. Brewer.)

Q. (By Mr. Smith): This check dated February 6th in the sum of \$338, signed by Rosalie Brewer, that is the check I am referring to. Did you cause that check to be made out and given to the Paramount Pest Control Service?

A. I am responsible for it.

Q. That is right.

A. That is all I can say. I don't recall—I can understand it now.

Q. So, you did give that check to Mr. Hilts at that time? A. No, it was mailed to them.

Q. And this is the statement which you prepared along with it? A. Yes, that is the statement.

Q. Is there any explanation you want to make of it at this time?

A. \$250 of that was half of the \$500 I had paid them before Hilts and I tangled the first of March.

Q. So, then, you did recognize the franchise agreement up until that time? [21]

A. I always recognized it as modified. This was to apply on moneys due to them.

Q. Then, is it your contention that this check (Plaintiff's Pre-Trial Exhibit No. 30) which you gave them, for \$338—what was that payment for?

A. That was for Invoice No. 2733, Invoice No. 2776 and Invoice No. 2707 and \$250 to apply to the franchise.

Q. This \$250 to apply to the franchise, was that on a fifty-fifty basis or a 20 per cent basis?

A. That was the fifty-fifty basis.



(Deposition of Charles P. Brewer.)

Q. That check is Exhibit No. 30, isn't it?

A. Yes.

Q. And the memorandum that we are speaking of is Exhibit No. 31?      A. Yes.

Q. Now, I will ask you, Mr. Brewer, if this is your signature on this check dated March 6, 1947?

A. It is.

Q. We are speaking of Exhibit No. 30?

A. Right.

Q. That is a check for \$250 to the Paramount Pest Control Service?      A. Right.

Q. And that is to apply on the 1946 franchise?

A. Right.

Q. Is that \$250 calculated on a fifty-fifty basis or a 20 per cent [22] basis?

A. On a fifty-fifty basis.

Q. I show you a check dated March 13, 1947, being Exhibit No. 34. That check is signed by you, is it not?      A. It is.

Q. Payable to the Paramount Pest Control Service?      A. Yes.

Q. In amount \$494.25?      A. Right.

Q. Is that correct?      A. Yes, sir.

Q. I notice on the memorandum, Exhibit No. 35, which accompanied it, that you have here listed "Franchise Bal. for January and February," and that franchise balance is \$494.25. That is the correct amount, is it not?

A. That is what that covers, yes.

Q. You made up those figures, didn't you?

A. No, I didn't.

(Deposition of Charles P. Brewer.)

Q. You recognized those figures to be correct, didn't you?

A. I recognized that is what blew up the bandwagon with Paramount and myself.

Q. But that was the amount which Mr. Hilts submitted to you?

A. That is the amount he submitted.

Q. And, in turn, you wrote out a check for \$494.25?      A. I did. [23]

Q. And that was the odd figure that would leave a balance of \$500?

A. That \$500 had been paid.

Q. That is correct. Thank you for the correction. Then, that would pay it in full?

A. That paid that statement in full, yes.

Q. This franchise, how is that figured, on what basis?

A. That is these other two checks of \$250 — fifty-fifty net profits.

Q. Is the franchise for January and February computed on a fifty-fifty basis or on a 20 per cent basis?

A. That statement was handed to me as a 20 per cent.

Q. Yes.

A. And I would not accept it. I did pay the \$494.25 only because I knew that I owed them at least \$494.

Q. But this is the statement and it was computed on a 20 per cent basis?      A. It was.

(Deposition of Charles P. Brewer.)

Q. You were told by Mr. Hilts at that time that the amount owing on the franchise was \$994.25, and that it was computed on a 20 per cent basis?

A. He told me that and I told him I was through with him.

Q. But, nevertheless, you did pay him the sum of \$494.25 on that statement? A. I did. [24]

Q. At that time did Mr. Hilts show you these figures which are represented by Exhibit No. 36?

A. I don't know.

Q. I will ask you whether or not this is in your handwriting, Exhibit No. 36?

A. That is in my handwriting, yes.

Q. And on that document which I refer to as being in your handwriting, Mr. Brewer, is written "July 9, 1947, paid Check No. 413, \$259.61." That is your handwriting?

A. That is my handwriting, yes.

Q. You knew what you were writing when you wrote it? A. I knew what I was writing.

Q. What? A. I did.

Q. I will ask you, Mr. Brewer, if that does not represent a computation made at that time by Mr. Hilts on the 20 per cent basis?

A. I don't know whether it is 20 per cent or not.

Q. That is what you understood at the time?

Mr. Stott: What are you referring to, that exhibit?

Mr. Bernard: That exhibit, No. 36.

Q. (By Mr. Smith): Will you answer the question? A. I can't answer that question.

(Deposition of Charles P. Brewer.)

Q. When you paid this check for \$259.61 that was a payment on a balance owing to the company as represented by Mr. Hilts, is [25] that right?

A. That is the check I gave them to knock off the end and leave an even figure only, which I did not have a chance to study nor understand at the time.

Q. So, then, it is your contention that when you paid him this check for \$259.61 you did not have any opportunity to go over the figures?

A. I hadn't.

Q. Why didn't you?

A. Because I was in and out of town, and he pulled a balance of the books and handed me a statement showing what I owed him. If it looked right to me as I understood the books, there wasn't too much argument; if it did not look right to me, there was an argument.

Q. Did this look right to you?

A. It didn't look right to me.

Q. Then why did you pay it?

A. I gave it to him only because he wanted to take home some money.

Q. You never wrote any letter confirming that, did you?           A. No.

Q. You haven't anything in writing confirming that?

A. I only told him that I would carry it during the month of July and I was done with it.

Q. Was anybody present when you told him that? [26]

(Deposition of Charles P. Brewer.)

A. I don't recall whether there was or not.

Q. Mr. Brewer, who kept the books of the Paramount Pest Control Service?      A. I did.

Q. When you say you kept the books, you mean you made all of the entries yourself?      A. No.

Q. The entries were made either by you or your wife?      A. Most of them were.

Q. Who else made entries?

A. Harold Hilts.

Q. Who?      A. Harold Hilts.

Q. Did he make any wrongful entries in the books?      A. Not to my knowledge.

Q. All of the entries which were made by your wife were made under your direction and supervision?      A. Right.

Q. So you do admit responsibility of keeping those books?      A. I do.

Q. Are those books correct?

A. To the best of our ability.

Q. And they are understandable by you?

A. They are.

Q. At any time, did you ever have an audit made of those books? [27]

A. Not by a certified public accountant.

Q. Who did you have audit them?

A. There was no complete audit ever pulled on them.

Q. What partial audit was made?

A. Harold Hilts was supposed to have pulled an audit somewhere around the first of March for income tax purposes.



(Deposition of Charles P. Brewer.)

Q. Was there any person, other than Harold Hilts, that ever made a partial or complete audit of the books?      A. Not of the books, no.

Q. Well, of your accounts, then?      A. No.

Q. Did you ever have any bookkeeping service that would check your books and your accounts?

A. No.

Q. Or any accounting service of any kind?

A. No.

Q. So, the only accountants who ever worked on the books, that is, to your knowledge, were you and your wife and Mr. Hilts?

A. Until I left them, yes. I will take that back. The books were set up by a bookkeeper for Paramount Pest Control Service, Mrs. Jacobs. She worked for the first or second month, some time around the first of July or August, something like that.

Q. Mr. Brewer, the only written notice that you ever gave to the company of the termination of this franchise was your letter of July 24th, correct? [28]

A. The only written——

Q. Is that right?      A. That is right.

Q. You had a copy of your sales agent's agreement with the Paramount Pest Control Service?

A. I had.

Q. And do you recognize that it has a provision in there as to how the agreement should be terminated?      A. It does.

(Deposition of Charles P. Brewer.)

Q. And, at the time you sent this notice out, you were acquainted with the provision which required that the agreement could be canceled by either party on ninety days' written notice?

A. I was acquainted with it.

Q. Why did you not abide by that provision?

A. Because they would have broke me if I had.

Q. What do you mean by saying they would have broke you if you did that?

A. They would have tried to grab my books, equipment and supplies, if I tried to stay with them ninety days.

Q. Is that the only reason?

A. I notified them that I would not continue with them beyond the month of July and I wrote them a letter confirming that.

Q. When you say you wrote them a letter confirming that, that is the letter of July 24th?

A. It is. [29]

Q. When you asked them to accept your resignation as of August 1st?           A. Right.

Q. The reason that you did not give them ninety days' notice is that, if you had, they would have broken you?           A. Right.

Q. That is the only reason you did not give them the ninety days' notice?           A. Right.

Q. Mr. Brewer, after you ceased working under this franchise agreement, what did you do? Did you go into the pest control service?

A. I went into business for myself under my own name.

(Deposition of Charles P. Brewer.)

Q. You say that you went into business for yourself under your own name. Is it not a fact, Mr. Brewer, that you first went into business under the name of Rosalie Brewer?

A. Yes. She signed the assumed name certificate. She is my wife.

Q. Yes, and that, in truth and in fact, was just a dummy organization, as far as she was concerned?

A. No. She owns half of my business, regardless.

Q. The first business that you went into, that was called what?

A. Brewer's Pest Control.

Q. Who filed the assumed business name certificate?

A. My wife. [30]

Q. Did that certificate show you as having an interest in the business?

A. No.

Q. So you did not have a half interest in the business?

A. My wife and I owned it.

Q. But the original certificate which was on file did not show you as a part owner?

A. No.

Q. After that Mr. Brewer, did you have your wife withdraw that assumed business name certificate?

A. Yes, she withdrew it.

Q. And, simultaneously, did you file a new assumed business name certificate?

A. I did.

Q. In that new certificate what did that show regarding who was the owner of Brewer's Pest Control Service?

A. Showed myself as the owner.

Q. Does it show your wife as a part owner?

A. No.

Q. Is she or is she not a part owner?

(Deposition of Charles P. Brewer.)

A. There is a community property law in Oregon. She owns half of anything that is mine.

Q. Is that the only way that she has any interest in it, by virtue of the community property law?

A. Well, and being my wife, yes. [31]

Q. But she did not invest any money in it?

A. Our money was invested.

Q. Why was it, when you first went into business, you did not use your own name?

A. I was too busy working Paramount business. I didn't want to take the time off to go up and file it.

Q. When was that filed? A. I don't remember.

Q. Is it not a fact it was filed on or about July 30th? A. On or about there, yes.

Q. Yes, and, to the best of your knowledge, it was July 30th? A. I suppose it was.

Q. You say the only reason that you had it filed in her name was that you were too busy to do it yourself? A. I was working as Paramount.

Q. Yes.

A. I did not feel like going up and filing any assumed name certificate under the name of Brewer.

Q. Why?

A. I was busy and I was still with the Paramount.

Q. Was it for both of those reasons?

A. I was busy.

Q. Then, the fact you were still working for Paramount did not make any difference?

A. Made a lot of difference. [32]

(Deposition of Charles P. Brewer.)

Q. Well, I want you to tell the whole story. Just don't answer one question halfway. Tell us why it is that you had her fill out the assumed business name certificate instead of you having it filled out yourself. Tell us the whole story.

A. She could go out without interfering with Paramount business. I could not.

Q. What do you mean by that?

A. Well, I was working in the interest of the company named Paramount Pest Control Service.

Q. In other words, you felt you would be violating your franchise?

A. No. I felt I would be violating my own personal interests if I would take time off from Paramount business to go and file an assumed name certificate.

Q. In other words, you felt you owed all your time to the Paramount interests? A. I did.

Q. And, being scrupulous about that, you did not even want to take time off to go up to the Court House to file this certificate? A. Right.

Q. Is it not a fact that you could have just signed your name to the certificate and sent somebody up to the Court House to file it for you?

A. Someone had to go up and get it.

Q. But the only reason that you put it in her name was that you did not want to take the time to go to the Court House, but you [33] wanted to devote all your time to the Paramount Pest Control Service? A. That is right.



(Deposition of Charles P. Brewer.)

Q. Mr. Brewer, this assumed name of Brewer's Pest Control, when did you commence to work for it?      A. August 1st.

Q. So you did work for your wife?

A. We own it together.

Q. So, since August 1st, you have been working for Brewer's Pest Control, originally filed by Rosalie Brewer and then subsequently filed by you?

A. Right.

Q. And continuously all the time, right up to the present moment?      A. Right.

Q. When did you first get the idea that you would go into business for yourself?

A. In June, 1947, the end of June or the first of July.

Q. Was that after Mr. Hilts left?

A. Right.

Q. Try to fix the date, as best you can, if you will, Mr. Brewer?

A. Oh, some time between the 9th and 24th of July.

Q. Some time between the 9th and 24th of July is the first time you had definitely made up your mind you were going to quit the Paramount Pest Control Service? [34]      A. No.

Q. All right. Tell me when you had made up your mind you definitely were going to quit the Paramount Pest Control Service?

A. The end of June.

Q. The end of June?

(Deposition of Charles P. Brewer.)

A. Yes. I told them I was; told both Hilts and Sibert.

Q. The end of June? A. I did.

Q. What date was that? Fix it.

A. Some time after the 25th.

Q. Some time after the 25th did you make an unequivocal statement to Hilts and Sibert you were going to quit Paramount Pest Control?

A. I told them I would carry the business through the month of March—or July, rather.

Q. Yes. So there could have been no doubt in their minds but what that was an oral notification to them that you would work through the month of July but no longer for Paramount Pest Control Service?

A. I don't know what to say. You start off to say one thing and then change to another.

Q. You answer it.

A. If it can be read so I can understand it——

(Question read.)

A. None whatever. [35]

Q. (By Mr. Smith): Is that correct?

A. That is right.

Q. Prior to telling them that, Mr. Brewer, how long prior to that had you made up your mind you were going to go into the pest control service for yourself?

A. I hadn't made up my mind to do it.

Q. When did you make up your mind you were going into the pest control service?

(Deposition of Charles P. Brewer.)

A. Some time in the month of July.

Q. Approximately when?

A. Oh, between the 10th and 25th.

Q. Between the 10th and 25th, and when was it that you made out your last check to Mr. Hilts?

A. I imagine somewhere around the 9th of July.

Q. The 9th of July?

A. I suppose. It is one of the exhibits here.

Q. Did you make up your mind you were going into the pest control service for yourself before or after you gave the company their last check?

A. It was after.

Q. How soon after?

A. I couldn't say the exact date.

Q. About when?

A. Somewhere between a week or two weeks.

Q. When did you first begin to solicit Paramount Pest Control [36] Service customers?

A. The first day of August.

Q. And prior to that did you solicit any of their customers?      A. None whatever.

Q. Prior to that time did you tell any of their customers that Paramount Pest Control Service was not going to be rendering pest control service any longer?      A. I did not.

Q. Did you advise them that there was going to be a change?      A. Who?

Q. Any of the customers that you were servicing for Paramount Pest Control Service?

A. Oh, yes. I notified some that I was leaving Paramount.

(Deposition of Charles P. Brewer.)

Q. When was the first time that you notified any customers that you were leaving Paramount Pest Control Service?

A. After I made up my mind to.

Q. Fix that on a calendar date.

A. Oh, well, it would be some time during July.

Q. During the month of June you never told any customers you were leaving Paramount?

A. I had no intention of it at that time.

Q. But during the month of July you did?

A. I told a few, yes.

Q. When you say you told a few, how many did you tell?           A. I have no idea. [37]

Q. Well, then, if you have no idea, how can you say you told a few?

Mr. Bernard: I object to the question as being argumentative; object to the form of the question.

Mr. Smith: Can it be answered?

Mr. Bernard: Surely.

A. I don't know whether—

Q. (By Mr. Smith): Would you name some of them that you told?

A. I told Safeway Stores, Incorporated.

Q. Who else?

A. I told Albers Milling Company.

Q. Yes.

A. Fisher Flouring Mills—no, I didn't. Hudson-Duncan Company.

Q. Who else?           A. I know of those three.

Q. What did you tell them?

(Deposition of Charles P. Brewer.)

A. I told them that I was leaving Paramount.

Q. Didn't you also tell them you were going into business for yourself?

A. I don't know whether I did or not.

Q. Didn't you also tell them you could render the same service to them?

A. I told them that the first of July, or the first day of August. I told them I could do that.

Q. Did you ever tell anyone, prior to the first day of August, [38] that you could render pest control service?

A. I don't remember the exact—not the exact time.

Q. I think if you will just take a second to think it over, Mr. Brewer, you can definitely say whether or not you told any Paramount Pest Control customer, prior to August 1st, that you could render them pest control service.

Mr. Bernard: I object to that as not being a question. It is merely a statement to the witness that if he thinks it over he can definitely state something. There is no question.

Mr. Smith: That is right.

Q. Bearing in mind what I have said, Mr. Brewer, I will ask you the same question again. Would you care to answer it?

A. What question?

Q. Whether you told any Paramount Pest Control customers, prior to August 1st, that you could render, as an individual, pest control service to them?



(Deposition of Charles P. Brewer.)

A. I probably told one or two that I could.

Q. Then the purpose of telling them that was to get their business?

A. I was asked what I was going to do, probably.

Q. As a matter of fact, on August 1st, you stepped right in and took over a great number of Paramount Pest Control Service customers?

A. No. We went soliciting August 1st.

Q. Of course, when you went soliciting, you went to those whom [39] you, as a Paramount Pest Control Service agent, had previously solicited and served? A. Some of them were, yes.

Q. Whom did you talk to at Hudson-Duncan?

A. Herb Lacey.

Q. At Albers, you talked to Mr. Flanagan?

A. Right.

Q. Fisher Flouring Mills, did you talk to Miss Dayton? A. I don't know.

Q. Some woman there anyway?

A. Some woman there. I never talked to Fisher Flouring Mills myself.

Q. Safeway Stores, you talked to Mr. Blair there? A. Right.

Q. Who are some of the others that you had spoken to? A. Those are the ones I remember.

Q. How about over at this Pioneer Fruit Company?

A. I never talked to anyone in Pioneer Fruit.

Q. Did you talk to any of these fruit people over there? A. I did not.

(Deposition of Charles P. Brewer.)

Q. There is one other thing I want to get to. When you set up this Brewer Pest Control Service, whom did you hire to work for you?

A. August 1st, I hired Raymond Rightmire.

Q. What other men did you hire? [40]

A. And Earl Merriott, shortly thereafter or at that time. I don't remember the exact dates.

Q. Following that, whom did you hire?

A. I hired Carl Duncan somewhere around the 20th of August.

Q. When did you hire Merriott?

A. Some time around the first of August.

Q. When did you hire Rightmire?

A. The first of August.

Q. Whom else did you have working for you?

A. That was all.

Q. These three men, Rightmire, Merriott and Duncan, all three of them were employees of Paramount Pest Control Service? A. Formerly.

Q. Yes. And these men knew the customers of the Paramount Pest Control Service in the Oregon vicinity?

A. They had a list of the territory that they were to service.

Q. And they had serviced Paramount Pest Control customers and they still had that list with them?

A. No.

Q. What happened to that list?

A. It was left at the office.

Q. Were any copies ever made of that list?

A. No, sir.

(Deposition of Charles P. Brewer.)

Q. Even though copies were not made, Mr. Brewer, you boys could, by memory, know the principal customers of the Paramount Pest Control [41] Service?      A. We could remember some.

Q. In going your routes and soliciting customers, you, of course, would pick up these old customers of the Paramount Pest Control Service?

A. If they wanted our service, if they ordered our service, we serviced them.

Q. You would solicit them, would you not?

A. We solicited not only Paramount but others.

Q. When you would go in to solicit their service, their business, what would you tell them?

A. Tell them we were the Brewer Pest Control looking for customers.

Q. What would you tell them, as far as the Paramount Pest Control Service was concerned?

A. We didn't tell them anything about the Paramount Pest Control Service.

Q. Did you, at any time, ever say that the Paramount Pest Control Service was not servicing these customers in this vicinity?

A. I never said that, nor any of my men.

Q. Mr. Brewer, at the termination of this agreement, did you turn over to the Paramount Pest Control Service all of the stocks and merchandise, chemicals and equipment that you had previously used for pest control service?

A. After they agreed to settle according to an audit of the books [42] made by a Portland concern,

(Deposition of Charles P. Brewer.)

I agreed to turn over the equipment to them. An inventory was taken of all supplies and equipment and office equipment and supplies, and I turned it over to them, all except two articles which were inventoried and are still waiting for them to come and get.

Q. What two articles were they?

A. It is a spray trailer and a fog machine.

Q. Where are those articles now?

A. Those articles are at my home.

Q. They can come out and get them any time they want to?

A. Yes. I told them that.

Q. Other than these two pieces of equipment, did you retain any of their chemicals?

A. None whatever.

Q. Did you retain any of their stock?

A. Their stock—you are speaking as a corporation, and it was all my equipment and stock. I did not retain it.

Q. In other words, you considered that you had bought these supplies and they were yours?

A. It was my money.

Q. Those things, you did not turn in to the company?

A. Those things, I turned all of them in to the company.

Q. You did?

A. All except those two articles, one of which I would have to park out on the street, and the other one—I couldn't locate [43] it at that particular time. The boys had it.

(Deposition of Charles P. Brewer.)

Q. I am afraid you do not understand my question. In pest control service you need poisons and supplies, things of that kind? A. We do.

Q. Did you turn all of these poisons and supplies and other chemicals back to the company?

A. I turned over the warehouse keys and all supplies in it, also the office.

Q. You did not answer my question directly.

A. I did.

Q. Did you turn back every bit of poisons and supplies which you had previously used?

A. I turned back all supplies and equipment on hand.

Q. When you started out on August 1st, what poisons and supplies did you have?

A. Only what I went out and bought.

Q. Where did you buy them?

A. At the chemical warehouses around town.

Q. From whom did you buy most of them?

A. I bought some of them from this and that and the other.

Q. Where are they located?

A. Northwest district. I don't know their addresses off hand. I bought from McKesson & Robbins, I bought from Northern Wholesale Hardware Company, the Chown Hardware Company— [44]

Q. Did you buy them for cash or did you set up accounts with them?

A. No. Some of those were paid by accounts and some were paid by cash.



(Deposition of Charles P. Brewer.)

Q. In other words, all the supplies, poisons, chemicals and other equipment which you used subsequent to August 1st were things that you went out and bought yourself as distinct from supplies which you got from the Paramount Pest Control Service?

A. I believe that is misstated. I don't understand it.

Q. Will you state it correctly, then.

A. What was the question?

(Question read.)

A. Those were all the same supplies I had used prior to August 1st.

Q. What I have been trying to get at for the last fifteen minutes is: What have you done with all of the supplies and equipment which you had received from the Paramount Pest Control Service?

A. Didn't receive any from them. I left—all supplies and equipment that I had on hand as of July 31st I left there.

Q. Yes. Then, if such is true, doesn't it follow, as a matter of fact, that all of the chemicals, supplies and equipment, poisons and merchandise, which you used in the Brewer Pest Control Service subsequent to August 1st were equipment, supplies, merchandise and poisons which you bought separately and did not [45] receive from the Paramount Pest Control Service?

A. I bought all supplies and equipment used in the Brewer Pest Control Service after the first of August.

(Deposition of Charles P. Brewer.)

Q. Did you buy any before? A. No.

Q. All that you bought after August 1st you would naturally buy from someone other than Paramount? A. Right.

Q. So, all of the equipment, poisons and things that you had on hand or which you obtained from the Paramount Pest Control Service were either used up or left in the warehouse and turned back to Paramount?

A. I had bought all the supplies and equipment in the State of Oregon for Paramount Pest Control Service, but I left all that with Paramount.

Q. In other words, you did not take anything with you when you left there?

A. I did not take any supplies or equipment of Paramount.

Q. And you did not take any of their poisons?

A. No.

Q. Did you take any of their formulas?

A. They did not have any formulas.

Q. Did you take any of their records?

A. No, I didn't.

Q. Mr. Brewer, regarding this car which you purchased, what [46] was that purchased with? Whose funds? A. My own.

Q. Is that money you took out of the business?

A. Money I wrote a check out of the business for.

Q. Did you consider that money in the business? Did you consider that your money or Paramount's money?

(Deposition of Charles P. Brewer.)

A. It was my money. I had opened a bank account with my own money and I operated from that bank account.

Q. So, the money which you used to buy that car with was your own personal funds?

A. It was my company funds.

Q. You were not indebted to the company at that time?

A. What do you mean, indebted to the company?

Q. That was not money owing to the company at that time?      A. What company?

Q. Paramount.      A. Corporation?

Q. Yes.      A. I may have owed them money.

Q. But it was not due?

A. It could not have been due because I did not have it to pay to them.

Q. What?

A. I did not have money to pay to them. They could not press me for payment according to our agreement. [47]

Q. I see.

A. And when they refused to furnish me a car or truck or any conveyance, I told them I had to have a car and Ted Sibert told me personally that I had to go and buy one if I wanted it.

Q. Did you go out and buy one?      A. I did.

Q. When did you buy it?

A. I don't remember the date.

Q. You can give us the approximate date.

A. I don't know. It is someplace in your complaint I think.

(Deposition of Charles P. Brewer.)

Q. Give us the date the best you can.

A. I don't have any idea; somewhere in that spring.

Q. March?

A. Some time between March and June.

Mr. Stott: What year?

A. 1947.

Q. (By Mr. Smith): The money which you took to buy that with was money that was drawn out of the Paramount Pest Control account?

A. In Portland, yes.

Q. That car, was that put in the name of the Paramount Pest Control Service?

A. It was not.

Q. Was it put in your own personal name?

A. It was put in my personal name. [48]

Q. Do you have that car now? A. I do.

Q. Do you use that car in the business?

A. I do.

Q. Mr. Brewer, you of course are acquainted with this clause in the contract which provides: "The agent further agrees that for a period of three years after the termination of this agreement, or his period of employment, he will not, directly or indirectly, communicate or divulge to or make use of for the benefit of any person, partnership or corporation any of the trade secrets, formulas, processing methods of the company, or the names, addresses or requirements of any of the customers of the company or any other information related to the com-

(Deposition of Charles P. Brewer.)

pany's business which he may have acquired or learned during his employment."

Have you lived up to that provision?

Mr. Bernard: I object to that as calling for a conclusion of the witness, calling for his opinion on the issues as framed by the pleadings.

Mr. Smith: Can he answer it, subject to the objection?

Mr. Bernard: No, I will not have him answer that unless the Court orders it.

Q. (By Mr. Smith): Then, in this agreement, you agreed further that you would not, either as an employee, employer or otherwise, canvass, solicit or cater to any of the customers of the company [49] which you may have known by virtue of your employment. You have, however, solicited these customers, have you?

A. I have solicited firms that were at one time on Paramount's books.

Q. Do you consider it is your right to go into the pest control service in this area?

A. There is nothing that says I can't in the contract.

Q. There is a provision in the contract which prohibits you from canvassing or soliciting these customers, isn't there?

Mr. Bernard: I object to that as the contract speaks for itself.

Mr. Smith: That is true, but I want to get this man's idea on it.



(Deposition of Charles P. Brewer.)

Mr. Bernard: His ideas are framed by the pleadings in this case, set out in writing. If you want to inquire as to the fact as to what he has done, I have no objection, but as to his opinion as to the legal conclusion that followed from his actions, then I object to that. In other words, you are asking for his opinion on the legal questions involved in this case. I have no objection to your asking what he has done; I haven't the slightest objection. Then it will be for the Court to say whether or not what he has done is a violation of the contract under the issues in the case and the facts in the case.

Q. (By Mr. Smith): Mr. Brewer, all the time that you were working as agent for the Paramount Pest Control Service, they were [50] a California corporation; you, of course, knew that they were a corporation?

A. I knew—I understood they were a corporation.

Q. You dealt with them as such?

A. As such.

Q. Yes. When is the first time you told the Paramount Pest Control Service, if you told them at all, that you were going into the pest control service for yourself? A. About August 6th.

Q. So you were already in the business before you notified them of it? A. Yes.

Q. When you notified them of it, they had already known it before anyway?

A. They asked me if I was.

(Deposition of Charles P. Brewer.)

Q. In other words, not so much a notification as it was an admission?      A. Right.

Q. Mr. Brewer, if I understand you correctly, regarding this contract, your only contention of a breach is your contention that Mr. Hilts insisted on a division of 20 per cent instead of the agreed division of fifty-fifty, as made by him and Ted Sibert?

A. No, Ted Sibert revoked that himself in the presence of Hilts, stating it would go back on a 20 per cent the first day of July. I told him I would not have anything to do with them on a 20 per [51] cent basis.

Q. When did he say that?

A. About the first of July.

Q. He said that about the first of July?

A. Yes.

Q. Who was present at that time?

A. I don't remember all that were there. It was in the office of the corporation there in Oakland.

Q. But other than this question of whether it should be a 20 per cent basis or fifty-fifty basis, you did not make any other contention that the company breached their contract?

A. They breached it on one point. They tried to run it back to 20 per cent and I would not operate under that setup.

Q. As far as your present frame of mind is concerned, you had no other complaint?

A. I had lots of complaints.

(Deposition of Charles P. Brewer.)

Q. Well, I mean complaints that were serious enough to be considered a breach of contract.

A. Not any one of them.

Q. Then what were your complaints in the aggregate?

A. It would take a long time to try to enumerate them.

Q. We have got the time. Go ahead and enumerate them.

A. Well, for one thing, I couldn't trust them.

Q. You couldn't trust whom?

A. They had broken too many managers over too many pretenses [52] that I knew of up and down the Coast; they had gotten too many managers in the red by making them borrow money to give to them; they were always after me to try to get me to borrow money and give to them; they tried to get me to change my personal automobile from my name into the name of the Paramount Pest Control Service; in twelve months' time they were after me at least nine times to do that; and I knew they had broken managers up and down the line and run in and grabbed supplies and equipment. I knew they could not be trusted when they would not live up to their contracts and I broke from them.

Q. Anything else.

A. That is a part of it; a good part of it.

Q. What is the other part?

A. That is the majority of it.

Q. Is there anything else that is of any concern, that is not trivial?

A. Not too much so, no.

(Deposition of Charles P. Brewer.)

Q. Mr. Brewer, what did you instruct Rightmire and Duncan and Merriott to say when they approached customers?

A. I never instructed them to say anything.

Q. In other words, they were on their own to say anything they chose?

A. No. They were not to knock anybody. That has always been my policy.

Q. I appreciate that, but as to what explanation that they [53] should give as to why they were not with Paramount any more?

A. They were working for Brewer's Pest Control.

Q. Did you instruct them to always tell customers, before they went in to make a service and when they went in to make a canvass—did you instruct them to always explain to the customer that they were not any longer working for Paramount Pest Control Service?

A. I never instructed them on any sales talk. They are men of integrity and they would not go in talking about Paramount Pest Control Service when they were working for the Brewer's Pest Control.

Q. So you never gave them any instructions as to what to say when they approached a customer?

A. Never at any time.

Q. Regarding yourself, Mr. Brewer, when you approached a customer, did you always explain to the customer that you were no longer working for Paramount Pest Control Service?

(Deposition of Charles P. Brewer.)

A. If it ever came up and they ever asked me, I did.

Q. If they did not ask you——

A. I told them I was with Brewer's Pest Control.

Q. But you always skipped around that tender point as best you could, is that right?

A. There was no tender point.

Q. But you would never tell them, then, that you were no longer representing the Paramount Pest Control Service, unless [54] they asked you?

A. If they had known I had been with Paramount Pest Control Service, I told them that I was in business for myself under my own name.

Q. Did you do that in every instance?

A. Lord, no.

Q. So, there were instances, then, when you would go in and do a servicing job for someone who had previously been served by you when you were working for Paramount Pest Control Service, and at that time you neglected to tell them you were in business for yourself?

A. They seldom asked me if I was. If so, I always said yes. I solicited lots of accounts I had never known before, never had been near under the name of Paramount. I went in and told them I was Brewer's Pest Control, and as to any accounts that had previously been Paramount Pest Control Service accounts, I went in and told them I was Brewer's Pest Control.



(Deposition of Charles P. Brewer.)

Q. Any time you served in your own individual capacity some customer who was previously a Paramount Pest Control Service customer, you always told them that you were no longer with Paramount?

A. I did not mention Paramount. Our talk was, when we entered a building, regardless of whether it was a sales pitch or service, "We are Brewer's Pest Control." That is the way we enter buildings.

Q. Is it not a fact, Mr. Brewer, that there are instances when you would go ahead and do your job and then it was not until the job was finished and the ticket was written out for it, for the job, after the job was completed, that you would tell the party you were no longer connected with Paramount?

A. No, sir. Any time we do service, the people know they are having service from Brewer's Pest Control.

Q. Every time?           A. Always.

Q. Going back to this assumed business name, the business, you say, was put in Rosalie Brewer's name, principally because you did not have time to go up to the Court House that particular afternoon; then, later on, her certificate was withdrawn and yours was put on record. Does she have an interest in that business?           A. She is my wife.

Q. Yes. Well, did you figure that you and she started out from scratch and that she helped you in that business and, therefore, she had an interest in the business? Is that it?

A. Half the money that is used or made is hers.

(Deposition of Charles P. Brewer.)

Q. So she really would have an interest in the business even though we did not have the community property law?

A. The community property law makes——

Q. You don't answer the question.

A. What was the question? [56]

Mr. Bernard: If you are not familiar enough with the law to answer that, you are free to say so, Mr. Brewer.

A. Well, all I know is that, as my wife, she has an interest in anything I have.

Mr. Smith: Does she have that by virtue of the fact that she is your wife or by virtue of the fact that she worked in the business?

A. By virtue of the fact that she is my wife.

Q. Well, did she work in the business with you?

A. She is not on the payroll, if that is what you mean.

Q. Does she come down to the office and do any work?

A. She helps me out now and then when I need help.

Q. Does she work in the office?

A. She does when she helps, yes.

Q. You are a little evasive. I want you to come right out and lay it right on the line.

A. She is not a paid employee. If there is any office work to be done that I don't do and I ask her to do it, she does it.

Q. How many hours a week or a month or how much time does she put in?

(Deposition of Charles P. Brewer.)

A. It varies; sometimes an hour a day, days when she works; two or three or four hours a week.

Q. In other words, she does not get any salary?

A. None whatsoever.

Q. But she does participate in the profits of the company? [57]

A. There hasn't been any profits. Any money I make, she is bound to enjoy part of it as my wife.

Q. In other words, she can draw money out of the company and use it for family expenses or for buying her clothes?

A. Not for herself, she cannot.

Q. How is it her money, then?

A. It isn't her money as long as it is in the company.

Q. Then, is it your contention that she has an interest in the business because of the community property law?

A. No, by virtue of being my wife.

Q. And not by virtue of the fact that she does any work?

A. The work is not the reason that gives her any part of the business?

Q. What?

A. The work that she does is not the reason for her owning any part of the business.

Q. In other words, you just feel that any wife has a financial interest in her husband's business?

A. She has an interest in it.

Q. You consider her as a part owner?

A. I consider her as my wife.

(Deposition of Charles P. Brewer.)

Q. Answer the question. Do you consider her as a part owner?

A. As my wife, she owns anything I own.

Q. In other words, you and your wife own the business together? A. Under the law, we do.

Q. So, then, you consider, as far as title to this business is concerned, it is just as much your wife's as it is yours?

A. As much her business as mine, I suppose. I don't know how the law would read on that.

Q. Getting back to this question which was not answered, for the purpose of the record, Mr. Brewer, I want it made clear. Mr. Bernard made an objection to your answering this question about you doing business within a period of three years. Of course, this is not Mr. Bernard's deposition. It is your deposition but, nevertheless, he is your attorney and apparently I would conclude he advises you not to answer the question, so I want the record clear as to whether you, Mr. Brewer, refuse to answer the question.

Mr. Bernard: If it is the question I objected to, he certainly does object to it and I will advise him not to answer the question.

Q. (By Mr. Smith): You are, Mr. Brewer, of course, following the advice of your attorney?

A. Of course.

Q. I will ask you, in conducting this pest control service for the Brewer Pest Control Service, are you using the same methods or similar methods as used with the Paramount Pest Control Service?

(Deposition of Charles P. Brewer.)

A. I use methods used by the pest control industry.

Q. You have not answered my question. [59]

A. Paramount—I don't know all of their methods. I know our methods. Our methods were not always Paramount's methods.

Q. But you do use Paramount's methods?

A. I don't know what their methods are except the ones—I know the methods that we use.

Q. Did you work in pest control service before working for Paramount Pest Control Service?

A. I did not.

Q. Did you go through any period of training with them?      A. One week.

Q. Whom did you work under?

A. Carl Duncan.

Q. During this period of one week, did Carl Duncan show you the way they eradicated insects and various pests?

A. As much as he could, he did, yes.

Q. Whereabouts did you work with Carl Duncan?      A. In Oakland, California.

Q. Working with him that one week, that is the first time you ever had any pest control experience?

A. It is.

Q. Then, after working that one week with Carl Duncan, what did you do?      A. I went selling.

Q. Does that mean soliciting accounts?

A. Soliciting accounts. [60]

Q. How long did you solicit accounts?

A. Oh, a week or two weeks.



(Deposition of Charles P. Brewer.)

Q. Whom did you work under then?

A. They had a sales manager, I think you might call him, in the office that was more or less the head of the personnel.

Q. Was that out of the Oakland office?

A. Right.

Q. After these two weeks selling, what did you do?

A. Did a little trouble shooting here and there.

Q. Who were you working under?

A. The same party, personnel—John Kehoe.

Q. John what?           A. John Kehoe.

Q. How long did you do this trouble shooting?

A. Oh, for a week or two.

Q. Then what did you do?

A. I was shipped to Oregon.

Q. When you came up to Oregon, did you immediately take over the Oregon office?

A. Shortly thereafter, yes. There was no office at that time.

Q. You replaced Taylor, did you not?

A. Yes.

Q. Taylor had a place where he received office phone calls?           A. Yes.

Q. And stored supplies and things? [61]

A. Yes, in his apartment.

Q. So you took over where Taylor left off?

A. Right.

Q. Who came up here to help you?

(Deposition of Charles P. Brewer.)

A. Harold Hilts came up to help me get the books—to check the books over, and then he went back to California.

Q. Did anybody else work with you?

A. Not at that time. Had somebody working for the company——

Q. Who was that?

A. Some young fellow with a crippled leg.

Q. How long did he continue to work with you?

A. I took over the 10th of April and I think he stayed on the payroll until the first of May.

Q. Then he was the only man working with you from April to May?

A. Here in Portland. There was one man on the payroll in Salem.

Q. Then, after that, whom did you work with that were Paramount Pest Control employees?

A. Some time around the first of May, Ted Sibert came to Oregon and saw the condition I was in, no help, no work, and he called California and got Carl Duncan to come up and, shortly thereafter, I hired Rightmire to go to work—and Carl Duncan—had him up and worked with him three or four days, something like that. [62]

Q. Carl Duncan, is that the man who taught you and Rightmire most of the tricks of pest control and pest eradication?

A. All that he could, during the time that he was with us.

Q. These methods you were taught while working for the Paramount Pest Control Service, you

(Deposition of Charles P. Brewer.)

used those in your own business, or you use those in your own business now?           A. Hardly any.

Q. But you do use some of them?

A. None that the entire pest control industry does not use.

Q. Regarding the formulas and poisons that you put around—you are not a chemist, are you?

A. I am not.

Q. How did you learn to mix these poisons?

A. By going to the County Agent and going and talking to my competitors here in Portland.

Q. Did you learn any of that while you were working for Paramount Pest Control Service?

A. No, they had no formulas.

Q. The Paramount Pest Control Service had formulas, though, didn't they?

A. They didn't have any to my knowledge; at least, they could not supply me with any.

Q. Didn't they have poisons?

A. Yes, they had poisons.

Q. Didn't they supply you with poisons? [63]

A. Raw poisons, yes.

Q. Didn't they tell you how the poisons were to be mixed?           A. How they were what?

Q. Mixed.

A. They were not mixed. They were bought direct from the stores.

Q. Is it your contention that all the poisons used by Paramount Pest Control Service are poisons which can be bought over the counter from stores, or prepared?           A. Almost exclusively.

(Deposition of Charles P. Brewer.)

Q. Give me the exceptions?

A. They used to make a spray that they said they made themselves. I have no idea what it was or what it consisted of. It was furnished to us in bulk, if we wanted to buy it.

Q. But all other poisons can be bought in stores the same as patent medicines can be bought in stores?

A. To the best of my knowledge, they can.

Q. Is it your contention that there is no such thing as secret formulas that the Paramount Pest Control Service have that you used?

A. None that I ever heard of.

Q. You came to Oregon because you were sent up here by Paramount Pest Control Service?

A. Right.

Q. And some of the customers that you are now serving are customers that you met and knew of because of work you did as [64] agent for the Paramount Pest Control Service?

A. Some of them.

Q. And those you have canvassed and solicited to give their trade to you?

A. I have solicited some customers of theirs.

Mr. Smith: That is all that we have.

Mr. Bernard: I have a question or two that I want to ask.

Mr. Smith: Before I forget about it, I might reiterate that you are welcome to the books or the exhibits any time you want them.

(Deposition of Charles P. Brewer.)

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(Deposition of Charles P. Brewer.)

Mr. Scott: We want the audit and you won't give us that.

Mr. Smith: If you ask for it in the right manner and the Court orders it, orders us to give it to you, we will abide by the ruling of the Court.

Mr. Bernard: I should hope you would. That is very generous of you.

#### Cross-Examination

By Mr. Bernard:

Q. In questioning you about one of these accounts or statements that Hilts presented to you, presented you with, Mr. Smith asked you if you had written any letter denying the account that had been reached between you and Hilts. As a matter of fact, did you and Hilts reach any accounting?

A. Never reached an account.

Q. Now, about this inventory: Tell me what that inventory was [65] and how it was delivered.

A. It was an inventory taken around the first or second day of August by Harold Hilts and myself of the office equipment and office supplies, exterminating equipment and exterminating supplies that I had at the time.

Q. Who took that inventory?

A. That was in the handwriting of Harold Hilts. He and I together made it. He jotted it down as I checked it and called it off and he checked it.

Q. And all of these articles were delivered to the Paramount Pest Control Service?

(Deposition of Charles P. Brewer.)

A. Those were all delivered with the exception of these two items, and I took Harold Hiltz out and let him see those items and——

Mr. Smith: If you don't mind an interruption, could you give me those items and tell me where they are?

A. There is one hi-fog machine and one spray trailer.

Q. One hi-fog machine and one what?

A. One trailer.

Q. One spray trailer?

A. A spraying machine trailer.

Q. Whereabouts are they?

A. Those are at my home.

Q. Where is that located?

A. That is at 4929 Northeast 28th Avenue. [66]

Q. 4929 Northeast 28th?

A. Yes. If they are willing to pay for those, they can have them.

Q. That is different. How much?

A. Their value, minus depreciation.

Mr. Smith: I trust you don't mind this interruption?

Mr. Bernard: Go ahead.

Q. (By Mr. Smith): In other words, you have those, but you won't give them up unless you are paid their purchase value less depreciation?

A. That is what they were to pay me for, all of my supplies, and they have not paid me for any of them yet. I do not feel I should turn over more of them under the same conditions.

(Deposition of Charles P. Brewer.)

Q. So, then, if they went out to get them now, they would not get them?

A. At the present moment, no. At the time of the contract, they would.

Q. What?

A. Had they wanted them at the time, when they agreed to settle with me according to the audit, they would have had them if they had come and got them.

Q. They could have had them on August 1st without paying you anything further?

A. They could have.

Q. (By Mr. Bernard): Now, outside of the property that was in [67] the office at the time, about August first, where was the other property, Mr. Brewer?

A. It was in a warehouse at 15th Northwest and Marshall.

Q. How was that delivered to the Paramount people?

A. It was delivered to them in this respect: I had refused them entrance to there until such time as we had made an agreement or reached an agreement that was reached between T. C. Sibert and Harold Hilts and a few others and myself in the presence of the others.

Q. What was that agreement?

A. The agreement was that they would pay me for my supplies and my equipment, both office and extermination, and we would settle our accounts according to a C. P. A. audit of the books done by a Portland accounting firm.

(Deposition of Charles P. Brewer.)

Q. What did you do then towards turning the supplies over to them?

A. I met Harold Hilts and Wendy Fisher up at the building in which our office was and our supplies were stored. I called the manager of the building out there and told him as of that date forward the Paramount Pest Control Service would have the use of that building that I had rented, the room that I had rented there.

Q. And did you have a key to it?

A. At that time I had a key, and I gave them a key then.

Q. Did you discuss with these men who should make that audit? [68]

A. Yes. They asked me who to go to to make an audit and I said I didn't know of any firm in town except one that I knew of that was in the same building where the office was at that time.

I said, "There is a firm there. I know they are accountants," and the next morning—their names, by the way, are Jones and Young.

The next morning T. C. Sibert went to them and told them about the split-up between myself and Paramount, and asked them if they would audit the books. And Mr. Young, as I understand, told him he would.

Mr. Young asked me for my copy of the franchise and got a copy from them, and went in and sat down to do an audit of the books. T. C. Sibert came back and jumped on him and said he understood he was going to try to hang the Paramount Pest Con-



(Deposition of Charles P. Brewer.)

trol Service, and Mr. Young threw both of his hands in the air and told him he wouldn't have anything to do with the books, that is all, and he in turn took up the phone and called Sawtell, Goldrainer & Company.

Q. Who did you say took up the phone?

A. Mr. Young told Mr. Sibert he could recommend him or he would call and, from what I understood, Mr. Young called Sawtell, Goldrainer & Company and told them that there was a set of books there that we wanted an audit made of and would they do it and they said they would and they sent a man down there [69] and pulled an audit on those books.

Q. Is that the audit that you have requested an inspection of?           A. Yes, sir.

Mr. Bernard: That is all.

Mr. Smith: You don't want the books?

Mr. Bernard: If I want the books, I know how to get them.

Mr. Smith: All right.

And Further Deponent Saith Not.

(Signature of witness to the foregoing deposition expressly waived by the witness and by counsel for the respective parties.) [70]

[Title of District Court and Cause.]

State of Oregon,  
County of Multnomah—ss.

I, Ira G. Holcomb, a Notary Public for Oregon, do hereby certify that on the 7th day of January, A.D. 1948, before me as such Notary, at Room 503 United States Court House, in the City of Portland, County of Multnomah, State of Oregon, personally appeared at the time and place mentioned in the caption and stipulation set out on pages numbered 1 and 2 of the foregoing transcript Charles P. Brewer, a defendant, produced as an adverse party on behalf of the plaintiff.

Mr. F. Leo Smith and Mr. George E. Birnie, of attorneys for plaintiff, appearing in its behalf; and Mr. E. F. Bernard and Mr. Plowden Stott, attorneys for defendants, appearing in their behalf; and the said witness being by me first duly sworn to testify the truth, the whole truth and nothing but the truth, [71] and being carefully examined, in answer to oral interrogatories and cross-interrogatories propounded by the attorneys for the respective parties, testified as in the foregoing annexed deposition, pages numbered 1 to 70, both inclusive, set forth.

I further certify that all interrogatories and cross-interrogatories propounded to said witness, together with the answers of said witness thereto and all objections and motions taken or made, and other proceedings occurring upon the taking of said

deposition, were then and there taken down by me in shorthand and thereafter reduced to typewriting under my direction; and that the submission of the deposition, when fully transcribed, to the witness for examination and reading to or by him, and opportunity to the witness to make any changes in form or substance and signing of same by the witness were waived by the witness and by the parties; and that said deposition has been retained by me for the purpose of sealing up and directing it to the Clerk of the above-entitled Court, as required by law.

I further certify that I am not a relative or employee or attorney or counsel for any of the parties, or a relative or employee of such attorney or counsel, or financially interested in the action.

In Witness Whereof, I have hereunto set my hand and notarial seal this 9th day of January, A.D. 1948.

[Seal]        /s/ IRA G. HOLCOMB,

Notary Public for Oregon.

My Commission Expires July 21, 1948. [72]

[Endorsed]: No. 11892. United States Circuit Court of Appeals for the Ninth Circuit. Paramount Pest Control Service, a corporation, Appellant, vs. Charles P. Brewer, individually and doing business as Brewer's Pest Control, Rosalie Brewer, his wife, Raymond Rightmire, Carl Duncan and Earl Merriott, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed April 8, 1948.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

In the United States Circuit Court of Appeals  
Ninth Circuit

No. 11892

PARAMOUNT PEST CONTROL SERVICE, a  
corporation,

Plaintiff and Appellant,

vs.

CHARLES P. BREWER, individually and doing  
business as BREWER'S PEST CONTROL;  
et al.,

Defendants and Respondents.

ORDER RELIEVING APPELLANT FROM  
PRINTING OR REPRODUCING EXHIBITS

On the Application of Paramount Pest Control Service, a Corporation, Appellant in the above entitled matter, and the Affidavit of Kenneth C. Gillis supporting said Application. and good cause appearing therefore;

It Is Hereby Ordered that Appellant, Paramount Pest Control Service, a Corporation, be and it is hereby relieved from printing or reproducing the Exhibits to be used on Appeal in the above entitled matter and that said Exhibits shall be used in their original form.

Dated: April 19, 1948.

/s/ FRANCIS A. GARRECHT,  
Judge.

[Endorsed]: Filed April 19, 1948.



[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF THE POINTS ON WHICH  
APPELLANT INTENDS TO RELY ON  
APPEAL; DESIGNATION OF PARTS OF  
RECORD TO BE PRINTED

1. Appellant adopts in full the Points on which he intends to rely as specified in the record on file with the above entitled Court.

2. Appellant designates the following parts of the record to be printed, namely: (1) The entire certified typewritten record, the Deposition of Charles P. Brewer, and this statement and certificate, excluding Exhibits. (2) The Order of this Court relieving Appellant from printing or reproducing Exhibits and permitting them to be considered in their original form.

Dated: April 21, 1948.

/s/ ROBERT R. RANKIN,

/s/ KENNETH C. GILLIS,

Attorneys for Appellant.

[Affidavit of service by mail attached.]

[Endorsed]: Filed April 22, 1948.

